

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



76-1381

In the

UNITED STATES COURT OF APPEALS  
For the Second Circuit

B

Docket No. 76-1381

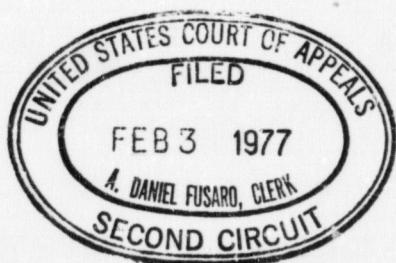
UNITED STATES OF AMERICA,  
Plaintiff-Appellee

vs.

DANIEL H. GEORGE, JR.  
Defendant-Appellant

On Appeal From The United States District Court  
For The District of Vermont At Criminal  
Action No. 76-2

APPENDIX FOR APPELLANT, DANIEL H. GEORGE, JR.



PETER M. CLEVELAND, ESQ.  
Attorney for Defendant-Appellant  
P. O. Box 297  
Shelburne, Vermont 05482

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA )  
vs. ) Criminal No. 76-2  
DANIEL H. GEORGE, JR. ) 21 U.S.C. Sections 812, 841,  
JAY LEAVITT, JOAN LEAVITT, ) 843, 846;  
DANIAL PAPPALARDO ) 18 U.S.C. Section 2

COUNT I

The Grand Jury charges:

On or about the 16th day of June, 1975, in the District of Vermont, DANIEL H. GEORGE, JR., and JAY LEAVITT, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 83 grams of amphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

COUNT II

The Grand Jury further charges:

On or about the 30th day of June, 1975, in the District of Vermont, DANIEL H. GEORGE, JR. and JAY LEAVITT, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute

approximately 144 grams of amphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

COUNT 3

The Grand Jury further charges:

On or about the 7th day of July, 1975, in the District of Vermont, DANIEL H. GEORGE, JR. and JAY LEAVITT, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 330 grams of amphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

COUNT 4

The Grand Jury further charges:

On or about the 15th day of July, 1975, in the District of Vermont, DANIEL H. GEORGE, JR., JAY LEAVITT, and DANIEL PAPPALARDO, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 308 grams of amphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, United States Code, and Section 2 Title 18, United States Code.

## COUNT 5

The Grand Jury further charges:

On or about the 1st day of October, 1975, in the District of Vermont, DANIEL H. GEOFGE, JR. and JAY LEAVITT, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 996 grams of amphetamine, a Schedule II controlled substance; in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

## COUNT 6

The Grand Jury further charges:

On or about the 7th day of October, 1975, in the District of Vermont, JAY LEAVITT, the defendant, knowingly and intentionally did use a communications facility, that is, a telephone, in committing and in causing and facilitating the knowing and intentional distribution and possession with intent to distribute by Jay Leavitt, Wayne Holden and Norman Holden of a quantity of amphetamine, a Schedule II controlled substance, felonies under Title 21, United States Code, Section 841; in violation of Sections 843(b) and 841, Title 21, United States Code.

## COUNT 7

The Grand Jury further charges:

From on or about the 1st day of January, 1971, up to and including the date of this indictment, in the District of Vermont and elsewhere, DANIEL H. GEORGE, JR., JAY LEAVITT, JOAN LEAVITT, and DANIEL PAPPALARDO, the defendants, and Wayne Holden, Norman Holden, Duane Harris, Bruce Garland, Gary Leavitt, Marilyn Sweeney, Richard Crisp, Kenneth Lotfy, Douglas Rumrill, Michael Preble, Lynnwood Lamar, Peter Amero and Brent Leavitt, named herein as co-conspirators, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together, with each other and with other persons to the Grand Jury unknown, to commit offenses against the United States, to wit, to violate Sections 812, 841, Title 21, United States Code.

It was a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally manufacture amphetamine and methamphetamine, Schedule II controlled substances; in violation of Sections 812, 841, Title 21, United States Code.

It was a further part of the conspiracy that the defendants and co-conspirators would knowingly and intentionally distribute and possess with intent to

distribute quantities of amphetamine and methamphetamine, Schedule II controlled substances; in violation of Sections 812, 841, Title 21, United States Code.

As part of said conspiracy and to affect the objects thereof, the following overt acts, among others, were committed within the District of Vermont and elsewhere:

1. On or about June 5, 1975, Wayne Holden, Norman Holden and Duane Harris were present in the Discotheque Bar in Brattleboro, Vermont.

2. On or about June 8, 1975, Wayne Holden spoke by telephone with Harold Anderson.

3. On or about June 13, 1975, Duane Harris spoke by telephone with Harold Anderson.

4. On or about June 15, 1975, Wayne Holden spoke by telephone with Harold Anderson.

5. On or about June 16, 1975, Wayne Holden met with Harold Anderson and Guy Pennell in Brattleboro, Vermont.

6. On or about July 1, 1975, DANIEL A. GEORGE, JR. operated a 1972 Chrysler station wagon bearing Massachusetts registration N73-951.

7. On or about July 10, 1975, Wayne and Norman Holden drove to Gloucester, Massachusetts and met with DANIEL PAPPALARDO.

8. On or about July 10, 1975, JAY LEAVITT met with Wayne and Norman Holden in Gloucester, Massachusetts.

9. On or about July 15, 1975, Bruce Garland drove an automobile in Brattleboro, Vermont.

10. On or about July 17, 1975, Duane Harris spoke with Harold Anderson.

11. On or about September 15, 1975, Norman Holden spoke with Harold Anderson.

12. On or about October 2, 1975, JAY LEAVITT, and JOAN LEAVITT met with Wayne Holden and Norman Holden in Salem, New Hampshire.

(In violation of Section 846, Title 21, United States Code.)

A TRUE BILL

/s/ William H. Leach  
Foreman

GEORGE W.F. COOK  
United States Attorney

By: /s/ Jerome F. O'Neill  
Jerome F. O'Neill  
Assistant U.S. Attorney

January 14, 1976

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA )  
)  
)  
v. )  
)  
Criminal No. 76-2  
MICHAEL H. GEORGE JR., JAY )  
LEAVITT, JOAN LEAVITT and )  
DANIEL PAPPALARDO )

MOTION FOR ACQUITTAL OF  
DEFENDANT DANIEL H. GEORGE, JR.

NOW COMES the Defendant, Daniel H. George, Jr., by  
and through his attorney, Peter M. Cleveland, and moves the  
Court to grant the following:

1. That the Defendant be acquitted under Rule 29 of the Federal Rules of Criminal Procedure, of the charge of unlawfully, willfully and knowingly distributing and possessing, with intent to distribute amphetamine in Counts 1 - 6, under Section 841, Title 21, and Section 2, Title 18 of the United tates Code, because the government has failed to meet its burden of proof;

2. That the Defendant be acquitted under Rule 29  
of the Federal Rules of Criminal Procedure of the charge  
of co-conspiracy in Count 7, under Section 846, title 21  
United States Code, because the government has failed to

meet its burden of proof.

DATED at Shelburne, Vermont, this 15th day of  
June, 1976.

Respectfully submitted,

/s/ Peter M. Cleveland

Peter M. Cleveland, Attorney for  
Defendant Daniel H. George, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I, Peter M. Cleveland,  
Attorney at Law, and Attorney for the Defendant, Daniel  
H. George, Jr., have this 15th day of June, 1976, hand-  
delivered copies of the attached Motion For Acquittal to  
the following in the United States District Court for  
the District of Vermont, Federal Building, Burlington,  
Vermont:

George W. F. Cook, Esq., United States Attorney  
Martin Cosgrove, Esq., Boston counsel for Joan  
Leavitt  
Philip D. Saxon, Esq., counsel for Daniel Pappalardo

## UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

UNITED STATES OF AMERICA      )  
                                    )  
                                    )  
v.                              )  
                                    )  
DANIEL H. GEORGE, JR., JAY    )  
LEAVITT, JOAN LEAVITT and    )  
DANIEL PAPPALARDO              )

Criminal No. 76-2

## MEMORANDUM OF LAW IN SUPPORT OF

MOTION FOR ACQUITTAL

The government has not met the burden of proving that DANIEL H. GEORGE, JR., knowingly participated in the crime of Counts 1 - 7, of unlawfully, willfully and knowingly possessing, with intent to distribute, a variety of amphetamine. Further, the government has not met its burden of proof in establishing that DANIEL H. GEORGE, JR., was part of a conspiracy with the other Defendants.

In the criminal law there is no such thing as vicarious liability. It must be shown that a Defendant personally participated in the commission of a crime. In United States v. Dickerson, 508 F2d 1216 (1975) at 1217 (2d Court of Appeal) they state:

"Such participation may take the limited form of aiding and abetting, see 18 USC Sec. 2,

but even then it must be proved that the Defendant unconsciously assisted in the commission of the specific crime, in some active way."

For aiding and abetting to be shown, all of the elements of knowledge or intent that are required to be proven to convict the principal must be shown to convict the aider and abettor, except that the aider or abettor does not actually commit the crime, but just aids and abets or induces the crime. The knowledge must be the same.

In the United States v. Jones, 308 F2d 26 (1962)  
(2d Circuit Court of Appeal) at P. 32, it was said that there must be the same elements of knowledge established to convict a principal as to convict an aider and/or abettor. They quote from Judge Brown of the Ninth Circuit -

"To find one guilty as a principal on the grounds that he was an aider and abettor, it must be proven that he shared in the criminal intent of the principal."

The principals of United States v. Johnson, 513 F2d 819 (1975) may well be applied in this case. This was a 2nd Circuit Court of Appeals case that came out of an appeal of the United States District Court for the District of Vermont.

Johnson was convicted of conspiracy and importation of methamphetamine, based on his presence in an automobile owned by the Co-Defendant who was his close friend. The car stopped at U.S. Customs coming from Canada back into the United States. As in this case, the Defendant Johnson was

charged with possession of a regulated drug with the intent to distribute, in violation of 21 USC Sec. 841 and 18 USC Sec. 2, and other crimes of importing illegal drugs into the United States.

The government argued that because of the presence of Johnson with his close friend, in his friend's automobile at the time that the drugs were found, and the fact that he lied to the police about his presence in the automobile, this established a cumulative weight of evidence which was relevant evidence from which the jury could properly find, or infer, beyond a reasonable doubt, that the accused is guilty. The Circuit Court of Appeals rejected this line of reasoning at P. 823 -

"It is well established, however, that in order to be an aider and abettor, the Defendant must associate himself with the venture in some fashion, participate in it as something that he wishes to bring about, or seek by his actions to make it succeed."

Further, they stated -

"Absent evidence of such purposeful behavior, mere presence at the scene of a crime, even when coupled with the knowledge that at the moment a crime is committed, is insufficient to prove aiding and abetting or membership in a conspiracy."

These are also the same rules with respect to establishing a membership in a conspiracy. In United States v. Freeman, 498 F2d 569 (1972) 2d. Circuit Court of Appeals, the Court stated:

"In order to hold a man for joining others in a conspiracy, he must in some sense promote their venture himself and make it his own."

The Court further quoted from Mr. Justice Harlan in Grunewald v. U.S., 353 US at 404:

"The essential missing element is a showing that the act was done in furtherance of and for prior criminal agreement among the conspirators."

Again, in United States v. Johnson, supra, the Court, quoting from other cases gives the general rules for establishing the membership in a conspiracy in this Circuit:

"There must be some basis for inferring that the Defendant knew about the enterprise and intended to participate in it or to make it succeed."

and

"The conspirator must make an affirmative attempt to further the purpose of the conspiracy."

and

"The Co-Conspirator must promote the venture himself...have a stake in its outcome."

In United States v. Falcone, 109 F2d 579 (1940) the 2d Circuit Court of Appeals set down the standards that are so very often quoted today.

The Defendants were convicted under an indictment for conspiracy to operate an illicit still. Mr. Falcone, who supplied them and/or the distillers with sugar and yeast and cans out of which alcohol was distilled, or in which it was sold, appealed his conviction. Judge Hand stated that, in essence, the proof for a conspirator and/or abettor, was

the same, and that supplying goods is not, in itself, a crime even if the person knew of the illegal use for which he supplies were being used. Judge Hand reversed the conviction. The Court stated at P. 581 -

"In the light of all this, it is apparent that the first question is whether the seller of goods, in themselves innocent, becomes a conspirator with (or what is, in substance, the same thing, an abettor) the buyer, because he knows that the buyer means to use the goods to commit a crime.... It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own and have a stake in its outcome."

It was also held that jobber wholesalers and distributors who supplied sugar, yeast, and cans out of which alcohol was illicitly distilled, or in which it was sold, were not guilty of conspiring with buyers to operate illicit stills even if they know of illegal use to which the products were being put, notwithstanding that the distributor of yeast operated under a certificate taken out for him by a cousin who swore falsely that he was to do the business.

This circuit has expounded on a Motion For Acquittal (Federal Rule of Criminal Procedure 29) on conspiracy charges before. In U.S. v. Koenig, 388 F Sup. 670 (1974) D.C. N.Y., the Court gave a four step process that must be shown if the Motion For Acquittal is to be denied. The Court stated at P. 698 -

- a) the conspiracy as charged in the indictment actually existed;

- b) that the object of the conspiracy was to violate Federal law or to achieve a legitimate goal through the violation of Federal law;
- c) that the particular defendant under consideration, knowingly and willfully, i.e. with at least the same degree of intent as required for the substantive offenses alleged to be the objects of the conspiracy - became a participant in the conspiracy; and
- d) that at least one of the conspirators knowingly committed an overt act in furtherance of the conspiracy.

Based on the authorities listed above, we respectfully request that the Motion For Acquittal be granted.

The Government has not met its burden of proof. The mere theoretical explanation of basic chemistry or the sale of legal chemicals or apparatus is not, in itself, proof of part of a conspiracy or aiding or abetting a crime -

U.S. v. Falcone, supra. The Government has not proved the elements that must be shown to charge the Defendant was in a conspiracy; that the conspiracy actually existed; that the Defendant knowingly and willfully became an active participant in the conspiracy, and that he wished to bring it about. In short, the Defendant has committed no crime.

DATED at Shelburne, Vermont, this 15th day of June, 1976.

Respectfully submitted,

/s/ Peter M. Cleveland  
Peter M. Cleveland, Attorney for  
Defendant Daniel H. George, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I, Peter M. Cleveland, Attorney at Law, and Attorney for the Defendant, Daniel H. George, Jr., have this 15th day of June, 1976, hand-delivered copies of the attached Memorandum Of Law In Support Of Motion For Acquittal to the following in the United States District Court for the District of Vermont, Federal Building, Burlington, Vermont:

George W. F. Cook, Esq., United States Attorney  
Martin Cosgrove, Esq., Boston counsel for Joan  
Leavitt  
Philip D. Saxon, Esq., counsel for Daniel Pappalardo

that a conspirator must promote the venture making it his own, and have a stake in its outcome.

THE COURT. I am going to charge that. Let's go.

(In full court at 2:20 p.m.)

THE COURT. Ladies and Gentlemen of the jury. I am going to appoint Mr. Belanger as your foreman.

This case is a criminal proceeding brought by the United States against Daniel H. George, Jr., Jay Leavitt, Joan Leavitt and Daniel Pappalardo. As you already know, Jay Leavitt is no longer a defendant in this case making it unnecessary for you to consider his guilt or innocence in your deliberation. I also want to remind you that you should draw no inference from the fact that Mr. Leavitt is no longer a defendant, and his absence is not evidence of any kind as to the guilt or innocence of the three remaining defendants. You must determine the guilt or innocence of these three defendants solely from the evidence which has been introduced in the case, following the instructions I am about to give you. Although the indictment, which I will proceed to summarize for you, refers to Jay Leavitt as a defendant, you should keep in mind that he no longer is.

The grand jury indictment, in substance, charges the defendants in six remaining counts as follows:

Count I charges that on or about June 16, 1975

(Transcript Page 1180)

in the District of Vermont, Jay Leavitt and Daniel H. George, Jr., the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 83 grams of amphetamine, a Schedule II controller substance, in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

Count II charges that on or about June 10, 1975 in the District of Vermont, Daniel H. George and Jay Leavitt, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 144 grams of amphetamine, a Schedule II controlled substance, in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

Count III charges that on or about July 7, 1975 in the District of Vermont, Daniel H. George and Jay Leavitt, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute approximately 330 grams of amphetamine, a Schedule II controlled substance, in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

Count IV charges that on or about July 15, 1975 in the District of Vermont, Daniel H. George, Jay Leavitt and Daniel Pappalardo, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 308 grams of amphetamine, a Schedule II

(Transcript Page 1181)

controlled substance, in violation of Section 841, Title 21 United States Code, and Section 2, Title 18, United States Code.

Count V charges that on or about October 1, 1975 in the District of Vermont, Daniel H. George, Jr., and Jay Leavitt, the defendants, unlawfully and knowingly did distribute and possess with intent to distribute approximately 996 grams of amphetamine, a Schedule II controlled substance, in violation of Section 841, Title 21, and Section 2, Title 18, United States Code.

Count VI charges Mr. Leavitt alone, and for that reason you need not consider this count in your deliberations.

Count VII charges that from on or about January 1, 1971 up to and including the date of the indictment, January 14, 1976, in the District of Vermont and elsewhere, Daniel H. George, Jr., Jay Leavitt, Joan Leavitt and Daniel Pappalardo, the defendants, and Wayne Holden, Norman Holden Duane Harris, Bruce Garland, Gary Leavitt, Marilyn Sweeney, Richard Crisp, Kenneth Lotfy, Douglass Rumrill, Michael Prebble, Lynwood Lamar, Peter Americ and Brent Leavitt, named herein as co-conspirators, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the grand jury unknown to commit offenses against the United States; to wit, to violate Sections

(Transcript Page 1182)

812, 841, Title 21, United States Code. These provisions pertain to the manufacture and distribution of controlled substances.

The indictment charges that it was a part of the conspiracy that the defendants and co-conspirators would knowingly and intentionally manufacture amphetamine and methamphetamine, Schedule II controlled substances, and would knowingly and intentionally distribute and possess with intent to distribute quantities of amphetamine and methamphetamine, Schedule II controlled substances, in violation of Sections 812, 841, Title 21, United States Code.

As part of this alleged conspiracy, twelve overt acts in furtherance of the conspiracy are alleged in the indictment. I am not going to read these to you at this time, as I will comment concerning them later in the charge.

Your verdict should not be influenced by the fact that the defendants were indicted for these offenses by the grand jury. An indictment is merely a formal procedural method of accusing a defendant, or defendants, of a crime preliminary to trial. Therefore, the indictment is not evidence of any kind against a defendant and does not create any presumption or permit any inference of the defendant's guilt.

The defendants have pleaded not guilty to the charges contained in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of

fact presented by the allegations of the indictment and the denial made by the not guilty pleas of the defendants. You are to perform this duty without bias or prejudice as to any party.

At the outset, I instruct you that the guilt or innocence of each defendant must be determined by you separately and independently of any evidence which applies only to one or more of the other defendants. You should consider the case of each defendant as if he were being tried separately and alone. Because of this requirement, I frequently refer in these instructions to the defendants in the singular rather than in the plural sense.

Finally, it is important to understand that evidence of any alleged prior acts of a nature similar to those charged in the indictment may not be considered by you as evidence of the criminal character of a defendant, and you may not infer from evidence of prior similar acts that a defendant committed the particular acts charged. However, if you find that the other evidence in the case, standing alone, established beyond a reasonable doubt that a defendant did the specific act charged in the particular count, then under deliberation, you may consider evidence of any alleged prior similar acts for the limited purpose of establishing proof of motive, intent, knowledge, or absence of mistake or accident with respect to the act charged in that particular count.

Having this guideline in mind, I caution you to remember both that each count of the indictment must be evaluated as to each individual defendant, and that any evidence of prior similar acts committed by one defendant is not to be considered by you as having any bearing whatsoever as to the criminal character of any other defendant.

You have observed that the defendants did not take the stand to testify in their own behalf. They have a constitutional right not to do so. One of the highest constitutional safeguards in our system of criminal justice is that a defendant is not obliged to testify or to produce evidence in his own behalf, and he may not be called as a witness by the prosecution or compelled to give evidence against himself. The exercise by a defendant of his right not to testify raises no presumption of guilt and permits no unfavorable inference of any kind to be drawn in determining a defendant's guilt or innocence of a crime charged. You are not to consider in any manner whatsoever the failure of the defendant to testify as a witness or to produce evidence in his own behalf.

The law presumes a defendant to be innocent of a crime with which he is charged. This presumption of innocence continues throughout the trial down to the time in the jury room, if that time does arrive, when you are satisfied from all of the evidence, beyond a reasonable doubt, that a defendant is guilty of the crime charged. The law permits

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nothing but legal evidence presented before this jury to be considered in support of the charges against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the guilt of the defendant from all of the evidence in the case.

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case, but first, I would like to call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against a defendant beyond a reasonable doubt. You cannot find a defendant guilty unless you determine that the Government has established by the evidence each and every essential element of the crimes charged against him beyond a reasonable doubt. However, to support a verdict of guilty, you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt, you are not to understand that all doubt is to be excluded. It is rarely

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possible to prove anything to an absolute certainty. A reasonable doubt means substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth is conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. I stress to you that the law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence, and since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the Government.

If, after impartial consideration of all of the evidence, you can candidly say that you are not satisfied of the guilt of the defendant beyond a reasonable doubt, you should find the defendant not guilty. Conversely, if you are satisfied of his guilt beyond a reasonable doubt, you should find the defendant guilty.

There are two types of evidence which a jury may consider in determining whether or not a defendant is guilty as charged. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence,

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which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. On the other hand, if all the evidence in the case satisfies you beyond a reasonable doubt of the defendant's guilt, you should find him guilty.

Circumstantial evidence is legal and proper for you to consider, and you may convict the defendant upon this class of evidence alone if you are persuaded beyond a reasonable doubt of his guilt. To do so, however, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed and that the defendant is guilty of its commission.

You will recall that counsel in this matter have stipulated or agreed as to certain facts. You must accept such stipulations as evidence and regard the stipulated facts as proved.

Any testimony which has been excluded, or which has been stricken from the record, is not evidence in the case, and you will entirely disregard it in arriving at your verdict.

Likewise, the arguments of the attorneys and

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any statements which they made in their arguments are not evidence and will not be considered as evidence by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses, the stipulations of counsel, and all exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys' statements as to what that testimony was which will control you in reaching your decision. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as are justified in the light of your own experience.

If you find that witnesses differed as to what the facts were, it is generally better to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth. But, if you cannot so reconcile the testimony then you must determine from all the evidence before you which of the witnesses is entitled to greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give the

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testimony of each witness just such weight, just such credit, and have just such faith in it as you think it is fairly entitled to receive. Consider the appearance of the witnesses on the stand; their candor or lack of candor; their feeling or bias, if any; their interest in the result of the trial, and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper.

If you find that any of the witnesses in this action who are not parties made statements outside of court inconsistent with their testimony in court as to the facts involved in this case, you may consider these inconsistent statements only for the purpose of impeachment of the witness, or evaluating his or her credibility, and not for the purpose of showing the same to be true.

A witness is presumed to speak the truth, but if you reach the conclusion that a witness in this case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of his or her testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

There has been evidence in this case concerning the previous criminal records of some of the witnesses. You may consider this evidence of a previous criminal record as bearing on the credibility of these individuals and the weight

to be given their testimony. However, such evidence has no relation to the substantive crimes charged, and you are not to consider such evidence as bearing on the guilt or innocence of the defendants.

In this case you have heard the testimony of several persons who acted as Government informers. The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment or for personal advantage or dedication must be examined and weighed by you with greater care than the testimony of ordinary witnesses. You must determine whether and to what extent the informer's testimony has been affected by interest or by prejudice against the defendant.

You have also heard the testimony of several persons who can be considered as accomplices in some of the crimes charged in that they testified to drug dealings with the defendants and others. An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent. An accomplice does not become incompetent as a witness because of a participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of such weight to sustain a verdict of guilty even though not corroborated or supported by other evidence. However, the jury should keep in mind such testimony is always to be received with caution

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and weighed with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony beyond a reasonable doubt.

There has been testimony introduced in this case which we call expert testimony. In this regard, I refer to the testimony of Mr. Fonseca, the chemist for the Government, and Colonel Crooks, the chemist for Defendant Daniel George.

An expert is a person who, by reason of special study, training and experience as to a given subject, has knowledge concerning that subject superior to other people in general. The value of expert testimony or opinioned evidence given by an expert depends upon the honesty and ability of the witness, upon the facts used by him as a basis for his opinion, and upon his opportunity for observation. If the facts used by him for a basis are proved and his qualifications are high, and he is honest and impartial, and has ample opportunity to make proper observations and studies, his opinion may be of great value. While if his opinion is based upon a state of facts which the evidence does not sustain, or upon a very limited opportunity to make observations, his testimony may be of little value.

Expert testimony is to be weighed by you with all of the other testimony in the case, and the weight of all

the expert testimony in this case is for you, and you alone, to decide.

Having in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determinations in this case.

It is your duty, as jurors, to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen in finding a verdict contrary to the law as the Court gives it to you.

It is the sole province of the jury to determine the facts in the case. The Court does not, by any instructions given to you, intend to persuade you as to how you should decide any question of fact. It is your duty to decide all the facts from the evidence. All parties have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

Because of the nature of, and evidence in, this case, I will first instruct you with respect to the conspiracy offense charged in Count VII since it is necessary for you to first determine whether Defendants George and Pappalardo were guilty of the offense with which they are charged in Count VII before you can determine their guilt or innocence of the

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o-fenses with which they are charged in Counts I, II, III, IV and V. In this regard, I would remind you that as to the earlier counts, Defendant Pappalardo is alleged to have committed only the offense set forth in Count IV, and Defendant George is alleged to have committed the offenses in Counts I, II, III, IV and V. Defendant Joan Leavitt, of course, is only charged with the offense of conspiracy charged in Count VII.

Count VII of the indictment alleges that the defendants, Daniel George, Joan Leavitt and Daniel Pappalardo, were members of a conspiracy together with Jay Leavitt and other named individuals to commit federal drug offenses in violation of Section 846, Title 21, United States Code. Section 846 of Title 21 provides in relevant part that any person who conspires to commit an act prohibited by the federal drug control laws, shall be guilty of an offense against the United States.

The offense alleged to be the object of the conspiracy charged in Count VII, generally stated, are the manufacture and the distribution, or possession with intent to distribute of the controlled substances, amphetamines and methamphetamines, acts which are prohibited by 21 United States Code, Section 841(a)(1).

Before you can decide the specifics of this charge, I must advise you of some of the basic principles

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which are involved in the determination of the offence of conspiracy.

A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish by criminal or unlawful means some purpose not in itself criminal or unlawful. The essence of a conspiracy is the unlawful agreement between the conspirators. It is not necessary to find an express agreement, oral or written, before you can find that a conspiracy existed. What must be shown, however, is that the members in some way, impliedly or expressly, came to a mutual understanding. This showing need not be made by direct evidence. It may be, and usually is, proved by circumstantial evidence.

It is not necessary for the Government to prove that the objects of the conspiracy were carried out, or that the conspiracy was successful. Conspiracy is punishable whether or not the intended offenses are committed.

Before you can convict a defendant of the crime of conspiracy to commit an offense, or offenses, against the United States, you must be satisfied beyond a reasonable doubt that each of two elements of the offense has been proved with respect to the defendant. These elements are as follows:

One, that the conspiracy charged in the indictment was willfully formed and was existing at or about the date alleged.

Two, that the defendant knowingly and willfully became a member of the conspiracy.

The first element is that the conspiracy was willfully formed and existed at or about the time alleged in the indictment. The indictment alleges that the conspiracy commenced on or about January 1, 1971 and continued up to and including the date of the indictment, January 4, 1976. The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. If you feel that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then that crime becomes complete, and the fact that the Government did not show it as being carried on as early or as long as the indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

In this case, to satisfy the first element of the offense, the Government must establish beyond a reasonable doubt that the defendants conspired with each other or with one or more other persons to commit offenses pertaining to the manufacture and distribution of amphetamines and methamphetamine.

As I have previously stated, it is an offense under 21 United States Code, Section 841 for any person knowingly and intentionally to manufacture, distribute or possess

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with intent to distribute a controlled substance. Methamphetamine and amphetamine are controlled substances according to 21 United States Code, Section 812.

The word "manufacture" as used in this count is used in its usual and customary manner. I will explain in greater detail in connection with Counts I, II, III, IV and V what amounts to "distribution" or "possession with intent to distribute". My instructions at that time as to what is meant by "distribution" or "possession with intent to distribute" apply equally to Count VII.

As I pointed out earlier, in order to constitute a violation of this conspiracy count, it is not necessary to show that the conspiracy was successful or that the intended offenses were completed. Furthermore, it is not necessary that the Government prove that the conspiracy actually contemplated violation of each of these statutory offenses. It is sufficient for the purposes of Count VII if you find beyond a reasonable doubt that it was a part of the conspiracy to commit any one of the alleged offenses.

You must find as the second element that the defendants knowingly and willfully participated in the conspiracy with the intent to further some object or purpose of the conspiracy. By "knowingly and willfully", I mean that the defendants acted voluntarily and intentionally, with the intent being to disobey or disregard the law.

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In determining whether any defendant was a party to the conspiracy, each is entitled to individual consideration of the proof respecting him or her, including, without being limited thereto, any evidence of his or her knowledge or lack of knowledge, his or her status, his or her participation in key conversations, his or her participation in the plan, scheme or arrangements alleged.

I want to caution you that evidence of mere association by a defendant with one or more conspirators is not sufficient to establish that the defendant was a member of that conspiracy. Nor is it sufficient to establish that a defendant knew of the conspiracy, if he or she was not a participant in the conspiracy. The Government must establish that a defendant participated in the conspiracy with knowledge of at least some of its purposes and with intent to aid the accomplishment of its unlawful ends.

In considering whether the offense of conspiracy has been committed, you should also be aware that the failure to take steps to prevent a crime from being committed, standing alone, is not sufficient to sustain a conviction of the crime of conspiracy; nor is the fact, standing alone, of presence and knowledge that a crime is being committed.

You are aware that one of the defendants charged with the conspiracy in Count VII, Joan Leavitt, is the wife of Jay Leavitt, who was also indicted as a conspirator.

There is no principle of law which would prevent you from finding that Jay Leavitt and Joan Leavitt conspired to violate the federal drug laws, provided you find that all the elements of the conspiracy offense as I have explained them to you, are established as to these two individuals.

Husbands and wives may enter into agreements for criminal purposes just as other individuals. However, you should consider that Mrs. Leavitt was the wife of Jay Leavitt, and in determining whether she entered into such an agreement with her husband for criminal purposes, you should bear that fact in mind. In order to find Mrs. Leavitt guilty of conspiring with her husband, you must find evidence of something more than the type of agreements or associations which arise solely from, or because of, the marital relationship. The evidence must specifically establish beyond a reasonable doubt that Jay and Joan Leavitt entered into an unlawful agreement to manufacture or distribute amphetamine, as I have previously explained to you.

Evidence that Joan Leavitt was merely aware that her husband engaged in unlawful activities, or evidence that she aided him, or participated with him, in the ordinary activities incident to a marriage is not sufficient, standing alone, to establish a conspiracy. Also, there was no obligation on her part to take affirmative steps to prevent her

husband's illegal activities or to inform the authorities that he was engaged in them. These same general principles respecting the law of conspiracy should also govern your deliberations as to whether Joan Leavitt entered into a conspiracy with other defendants or conspirators and whether the other defendants conspired among themselves or with others. These special instructions respecting your deliberations as to any possible conspiracy between Jay and Joan Leavitt are necessary because of the special nature of the marital relationship.

There has been testimony and evidence in this case from which it could be found that Defendant George acted as a supplier of technical information, laboratory equipment, and chemicals to persons engaged in the manufacture of amphetamine and methamphetamine.

In this regard, I charge you that a person who sells and supplies essential technical information or equipment to persons engaged in a drug conspiracy may not, himself, be found guilty of conspiracy unless there is proof that he knew that the persons he was supplying were, in fact, engaged in a conspiracy. Moreover, you may not infer that the seller or supplier knew of the conspiracy merely from evidence that he knew that the information and equipment supplied would be used for illegal purposes. There must be evidence which satisfies you beyond a reasonable doubt that the seller in

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some sense promoted the venture himself, made it his own, or had a stake in its outcome.

If you find that Defendant George knew that the chemicals, chemistry formulas and laboratory equipment he was supplying would be used for illegal purposes, this evidence, standing alone, would not sustain a finding that Defendant George knew that a drug conspiracy existed, or that he intentionally joined such a conspiracy. In order to find his guilty, you must find that George knew of the conspiracy and agreed to join it. In this regard, you may consider the degree to which he may have promoted or encouraged the conspirators' activities; the profits, if any, that he may have obtained; the clandestine or secret nature of the transactions themselves, and any other evidence which may bear upon his participation in the conspiracy.

The Government has charged that a number of overt acts were performed by various conspirators in furtherance of the conspiracy. You may consider proof of any overt acts in determining whether a conspiracy existed or a particular defendant participated therein, but it is not necessary for the Government to prove any of the overt acts listed in the indictment in order for the offense of conspiracy to be complete and for that reason, I am not going to read them to you. However, you will find them present in the copy of the indictment which is supplied to you for your deliberations.

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In considering the elements of the offense of conspiracy, as I have stated them above, you may consider all of the evidence in the case. After considering all of the evidence, if you find that each of the elements of the offense of conspiracy has been proved beyond a reasonable doubt with respect to one or more defendants, then you must return a verdict of guilty as to those defendants. If, however, you are not convinced beyond a reasonable doubt as to the guilt of the defendants, then you must return a verdict of not guilty as to all defendants.

I will now instruct you as to the offenses charged in Counts I, II, III, IV and V. Counts I, II, III, IV and V of this indictment charge Jay Leavitt and Daniel George with distributing amphetamine, a Schedule II controlled substance, and with possessing amphetamine with intent to distribute it, in violation of 21 United States Code, Section 841. Count IV charges Daniel George, Jay Leavitt and also Daniel Pappalardo with these offenses.

In order for you to consider the guilt or innocence of Defendants George and Pappalardo with respect to the offenses charged in Counts I, II, III, IV and V, you must first determine whether either or both of them are guilty of the crime of conspiracy as charged in Count VII of the indictment in accordance with the instructions which I have just given you with respect to that offense. If you

find that Defendant Pappalardo was a member of the conspiracy charged in Count VII, you may then consider his guilt or innocence with reference to Count IV of the indictment. Similarly, if you find that Defendant George was a member of the conspiracy charged in Count VII, you may then consider his guilt or innocence with reference to Counts I, II, III, IV and V. On the other hand, if you do not find that Mr. Pappalardo and Mr. George, or either of them, were guilty of the conspiracy alleged in Count VII of the indictment, then you cannot find them guilty of the offenses with which they are charged in the other counts; that is, Count IV as to Defendant Pappalardo and Counts I, II, III, IV and V as to Defendant George.

Assuming you find Mr. George and Mr. Pappalardo or both of them guilty of the conspiracy charged in Count VII of the indictment, you may then find them guilty of the other offenses with which they are charged, only if you find that the crime with which they were charged in a particular count was committed by a co-conspirator of the defendant in furtherance of the conspiracy. In other words, you may find each member of the conspiracy guilty of substantive offenses with which they are charged, if the offense was committed by a fellow conspirator in furtherance of their conspiratorial purposes.

It is, therefore, not necessary to find that

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Daniel George or Daniel Pappalardo actually committed the substantive offenses with which they are charged. Guilt as to each defendant may be based upon a finding beyond a reasonable doubt that a co-conspirator of that defendant committed the act charged in furtherance of their conspiracy. The reason for holding conspirators criminally responsible for the criminal acts of their co-conspirators is that the co-conspirator acts as an agent of the other members of the conspiracy.

Differently stated, there is no evidence to the effect, nor does the Government claim, that Defendants George and Pappalardo themselves distributed or possessed with intent to distribute a controlled substance on the dates alleged in Counts I, II, III, IV and V as it pertains to them. Instead, their guilt, if any, is based upon the commission of the offenses alleged in Counts I, II, III, IV and V by a co-conspirator in furtherance of the conspiracy, if proved to your satisfaction beyond a reasonable doubt that the offense was, in fact, committed.

I will now instruct you in detail as to what constitutes the offenses charged in Counts I, II, III, IV and V.

21 United States Code, Section 841(a)(1) makes it unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance. 21 United States Code, Section 812 as amended by

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the Code of Federal Regulations, Section 1308.12(d) lists amphetamine as a Schedule II controlled drug.

The offenses charged in Counts I, II, III, IV and V require proof beyond a reasonable doubt of the following essential elements.

First, that on or about the date mentioned in each count, a co-conspirator of the defendant whose guilt you are considering either distributed amphetamine or possessed amphetamine with the intent to distribute it.

The word "distribute" means the actual, constructive, or attempted transfer, or delivery of a controlled substance. A person distributes an item when he gives, sells, or otherwise transmits it to another person. It is not necessary, however, that the Government prove that the person involved actually distributed the controlled substance, but rather only that the substance was possessed with the intent to distribute it.

Possession, as used in the statute, can be either actual or constructive. Actual possession means that a person knowingly has manual or physical control, or custody, of the narcotic; that is, the substance is in his personal possession. However, even if you find that a co-conspirator of a defendant charged with this offense did not actually possess the controlled substance, this element of the offense is satisfied if you find beyond a reasonable doubt that the

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person involved had constructive possession of the substance. A person has constructive possession of a controlled substance such as amphetamine if he has the power to exercise dominion and control over the substance.

Furthermore, such possession must be with the intent to distribute the controlled substance. This requirement means that you must find beyond a reasonable doubt that the possession was with the intent to give, sell, deliver, or otherwise transmit the controlled substance to others rather than to retain it for one's own personal use.

In this regard, you may consider all the facts and circumstances surrounding the alleged possession of the amphetamine as factors in determining whether the possession was with intent to distribute. Such factors may include a consideration of the quantity and value of the amphetamine. You may give all factors such weight as they are entitled to receive. This assumes, of course, that you find the fact of possession beyond a reasonable doubt.

The second element that the Government must prove beyond a reasonable doubt is that the co-conspirator of the defendant acted knowingly and intentionally. An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason. An act is done intentionally if it is done knowingly, voluntarily and willfully, and with the specific intent to do

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something which the law forbids; that is, with the purpose to either disobey or disregard the law.

The third element which must be proven beyond a reasonable doubt is that the substance involved here was, in fact, amphetamine, a Schedule II controlled substance. Note, however, that although it is alleged in the indictment that a particular amount or quantity of amphetamine was involved, the evidence in the case need not establish that the amount or quantity was as alleged in the indictment, but only that a measurable amount of amphetamine was, in fact, the subject of the acts charged in the indictment.

In summary, in order to find the defendants, or either of them, guilty of the substantive offenses charged, you will be required to find beyond a reasonable doubt that they were guilty of the offense of conspiracy charged in Count VII on the dates that the alleged substantive offenses took place, and that on those dates a co-conspirator of the defendant whose guilt you are considering committed the act charged in Counts I, II, III, IV or V in furtherance of the conspiracy.

The defendants alleged to be involved, and the dates of the alleged offense are as follows:

Count I - on or about June 16, 1975, Daniel H. George, Jr.

Count II - on or about June 30, 1975, Daniel

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H. George, Jr.

Count III - on or about July 7, 1975, Daniel  
H. George, Jr.

Count IV - on or about July 15, 1975, Daniel  
H. George, Jr. and Daniel Pappalardo.

Count V - on or about October 1, 1975, Daniel  
H. George, Jr.

Again, I want to suggest to you that while the law is for the Court and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence, or pleadings, is only for the purpose of making application of the principles of law to the issues in this case, and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you to determine.

The exhibits which have been admitted into evidence during the trial are for your consideration in your deliberations. We will send all of the exhibits into the jury room with the exception of the tapes and the evidence envelopes containing the substance which has been identified as amphetamine. If you wish to hear any of the tapes again, we will replay them for you in the courtroom upon request. If you wish to inspect any of the exhibits containing amphetamine, we will send them into the jury room for your inspection upon

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request and ask you to return them when that inspection has been finished.

We will send a copy of the indictment to you in the jury room. Count VI has been dismissed, and we have removed it from the indictment because, obviously, it is not for your consideration. In certain places the name of Jay Leavitt appears in the indictment, as I have already advised you. You are aware that he is no longer one of the defendants on trial in this matter.

You must return a verdict of guilty or not guilty as to each defendant as to each count in which they are charged. Your verdict must be unanimous and will be delivered orally by your foreman in response to inquiries made by the clerk.

(At the bench)

MR. O'NEILL. Your Honor, the only point the Government is concerned with in particular at this point in time--I am not sure if the Court indicated to the jury at any point in time, amphetamine is a Schedule II controlled substance as a matter law. If the Court did, fine, but I don't remember hearing it.

THE COURT. I didn't use it as a matter of law. I said, amphetamine and methamphetamine are controlled substances.

MR. O'NEILL. My only concern, they can be hung

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up on, are they scheduled. I found a lot of people think the schedules have great import for some reason or other. If the Court can give them some language, they don't need to be concerned with that.

The only other thing we thought should be added was with respect to the Pinkerton theory, the drugs need not be distributed by a particular person the defendant conspired with personally, as long as it was by someone who was a member of the conspiracy. That is to say, there is no evidence, for example, that Daniel George ever conspired with Wayne Holden directly, but rather the Government's evidence, we submit, suggests he was a participant in an overall conspiracy, and that evidence is sufficient if Wayne Holden makes the drugs. Our concern is that the jury may think they have to find Daniel George conspired with Wayne Holden, and then Wayne made the distribution. That certainly isn't the law.

THE COURT. I agree that is not the law. I thought we were clear on that point.

MR. CLEVELAND. I thought it was very clear. There is no cause for it among the defendants. There is suspicion. I think that is clear.

MR. COSGROVE. I am satisfied.

MR. CLEVELAND. Satisfied.

MR. SAXER. I have two points. First, the point I made in chambers, I still maintain before the jury is

entitled to consider statements made out of the presence of the defendants. Two, aiding and abetting, as you have said since yesterday is not out of the case, but if I don't miss my recollection again, as I have several times in the trial, it is all over the indictment.

THE COURT. No, it is in the indictment only in Section 2 of Title 18.

MR. O'NEILL: Which the Court never explained.

THE COURT. I never explained anything about aiding and abetting in the whole period of the indictment. They don't know what Section 2 is.

MR. SAXER. I think the Court should put something in its charge that aiding and abetting is out of the case and Mr. Pappalardo can be only convicted on this theory.

THE COURT. It is not in the case. I am satisfied it is not in the case. I am satisfied the jury isn't going to consider it, and I won't say anything more because it will point it up, and I don't see the necessity for it. However, I will advise the jury that amphetamine and methamphetamine are controlled substances, as a matter of law, just to clear it up.

(End of exceptions to the charge at the bench)

THE COURT. Ladies and gentlemen. There is one point that has been called to my attention, and I think I have told you this once before, but if there is any doubt about it,

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I want to make it clear that the substances amphetamine and methamphetamine are controlled substances, as a matter of law. So, those substances are controlled substances, as we have been discussing them.

Will the Marshals come forward and be sworn.

(Deputy Marshals Marlene Jolley and Paul Dingler were duly sworn by Deputy Clerk Curran.)

THE COURT. All right, ladies and gentlemen, you may take the case, and we are going to have to excuse our alternate, Mr. Putzier, and we thank you very much for your attention during this long two-week trial and appreciate the fact you have been here, but I guess we won't need you. The other jurors look healthy and will be able to make it.

The Clerk is telling me when you are supposed to reappear. I don't want to spoil the anticipation of the other jurors. I will have to tell you now it is next Tuesday at 1:15. the 22nd.

All right, ladies and gentlemen, you may take the case. We'll stand in recess.

(The jury retired at 3:10 p.m.)

(In the courtroom at 5:18 p.m. without the jury)

THE COURT. The Court has an inquiry from the jury which reads as follows: "Read conditions for conspiracy from charge of Court," and I am not quite certain as to what that means, but I assume it means the general instructions with

(Transcription Page 1212)

reference to the conspiracy count, and that is what I propose to read to the jury.

MR. COSGROVE. I ask all the instructions, especially with husband and wife be read to them.

THE COURT. I am not sure if that is what they want.

MR. COSGROVE. I would simply like, if that is what they do want.

THE COURT. I will make inquiry when they come in as to what they want.

MR. CLEVELAND. There were instructions specifically about Defendant George in regards to the conspiracy, and I would like those read again.

THE COURT. I can ask them if they wish that specific part of the charge read. The other thing I thought I should advise you, apparently this jury, although it is their very first time, is wise to the ways of the court. They already made arrangements to go to dinner at 5:30, which means, I think, I nevertheless will read this to them at this time. They may be a few minutes late for dinner, but they can stand that, I guess. Ask them to come in, Mr. Marshal.

(The jury entered the courtroom)

THE COURT. Mr. Foreman, we have a note from you which reads as follows: "Read conditions for conspiracy from the charge of Court". Now I assume by that you mean you

(Transcript Page 1213)

want the Court to re-read at this time the general language pertaining to the charge of conspiracy as I gave it to you previously, is that correct?

FOREMAN BELANGER. That is right, your Honor.

THE COURT. I would also remind you there are a couple of specific charges I gave with respect to the husband and wife relationship of Joan Leavitt in connection with the conspiracy charge, and also something I gave you specifically with reference to Defendant George in connection with the conspiracy charge. Do you also want that read at the same time?

FOREMAN BELANGER. I think you should probably include all of the information you gave us.

THE COURT. Fine. I will read that portion of the charge to you at this time, after I have a drink of water.

"Count VII of the indictment alleges that the Defendants, Daniel George, Joan Leavitt and Daniel Pappalardo, were members of a conspiracy together with Jay Leavitt and other named individuals to commit federal drug offenses in violation of Section 846 of Title 21, United States Code. Section 846 of Title 21 provides in relevant part that any person who conspires to commit an act prohibited by the federal drug control laws, shall be guilty of an offense against the United States.

(Transcript Page 1214)

"The offenses alleged to be the object of the conspiracy charged in Count VII, generally stated, are the manufacture and the distribution or possession with intent to distribute of the controlled substances, amphetamines and methamphetamines, acts which are prohibited by 21 United States Code, Section 841(a)(1).

"Before you can decide the specifics on this charge, I must advise you of some of the basic principles which are involved in the determination of the offense of conspiracy.

"A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish by criminal or unlawful means some purpose not, in itself, criminal or unlawful. The essence of a conspiracy is the unlawful agreement between the conspirators. It is not necessary to find an express agreement, oral or written, before you can find that a conspiracy existed. What must be shown, however, is that the members in some way impliedly or expressly, came to a mutual understanding. This showing need not be made by direct evidence. It may be, and usually is, proved by circumstantial evidence.

"It is not necessary for the Government to prove that the objects of the conspiracy were carried out, or that the conspiracy was successful. Conspiracy is punishable whether or not the intended offenses are committed.

(Transcript Page 1215)

"Before you can convict a defendant of the crime of conspiracy to commit an offense or offenses against the United States, you must be satisfied beyond a reasonable doubt that each of two elements of the offense has been proved with respect to the defendant. They are as follows:

"One: That the conspiracy charged in the indictment was willfully formed and was existing at or about the date alleged.

"Two: That the defendant knowingly and willfully became a member of the conspiracy.

"The first element is that the conspiracy was willfully formed and existed at or about the time alleged in the indictment. The indictment alleges that the conspiracy commenced on or about January 1, 1971 and continued up to and including the date of the indictment, January 14, 1976. The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. If you feel that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then that crime becomes complete, and the fact that the Government did not show it as being carried on as early or as long as the indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

"In this case, to satisfy the first element of

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the offense, the Government must establish beyond a reasonable doubt that the defendants conspired with each other or with one or more other persons to commit offenses pertaining to the manufacture and distribution of amphetamines and methamphetamine.

"As I have previously stated, it is an offense under 21 United States Code, Section 841 for any person knowingly and intentionally to manufacture, distribute or possess with intent to distribute a controlled substance. Methamphetamine and amphetamine are controlled substances according to 21 United States Code, Section 812.

"The word "manufacture" in this count is used in its normal and customary sense. I will explain in greater detail in connection with Counts I, II, III, IV and V what amounts to distribution or possession with intent to distribute. In my instructions at that time as to what is meant by distribution or possession with intent to distribute apply equally to Count VII.

"As I pointed out earlier, in order to constitute a violation of this conspiracy count, it is not necessary to show that the conspiracy was successful or that the intended offenses were completed. Furthermore, it is not necessary that the Government prove that the conspiracy actually contemplated violation of each of these statutory offenses. It is sufficient for the purposes of Count VII if you find beyond a

reasonable doubt that it was a part of the conspiracy to commit any one of the alleged offenses.

"You must find as the second element that the defendants knowingly and willfully participated in the conspiracy with the intent to further some object or purpose of the conspiracy. By knowingly and willfully, I mean that the defendants acted voluntarily and intentionally with the intent being to disobey or disregard the law.

"In determining whether any defendant was a party to the conspiracy, each is entitled to individual consideration of the proof respecting him or her, including without being limited thereto, any evidence of his or her knowledge or lack of knowledge, his or her status, his or her participation in key conversations, his or her participation in the plan, scheme, or arrangements alleged.

"I want to caution you that evidence of mere association by a defendant with one or more conspirators is not sufficient to establish that the defendant was a member of the conspiracy; nor is it sufficient to establish that a defendant knew of the conspiracy, if he or she was not a participant in the conspiracy. The Government must establish that a defendant participated in the conspiracy with knowledge of at least some of its purposes and with intent to aid the accomplishment of its unlawful ends.

"In considering whether the offense of conspiracy

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has been committed, you should also be aware that the failure to take steps to prevent a crime from being committed, standing alone, is not sufficient to sustain a conviction of the crime of conspiracy, nor is the fact, standing alone, of presence and knowledge that a crime is being committed.

"You are aware that one of the defendants charged with the conspiracy in Count VII, Joan Leavitt, is the wife of Jay Leavitt who was also indicted as a conspirator. There is no principle of law which would prevent you from finding that Jay Leavitt and Joan Leavitt conspired to violate the federal drug laws, provided you find that all the elements of the conspiracy offense, as I have explained them previously, are established as to these two individuals.

"Husbands and wives may enter into agreements for criminal purposes just as other individuals. However, you should consider that Mrs. Leavitt was the wife of Jay Leavitt and in determining whether she entered into such an agreement with her husband for criminal purposes, you should bear that fact in mind. In order to find Mrs. Leavitt guilty of conspiring with her husband, you must find evidence of something more than the type of agreements or associations which arise solely from, or because of the marital relationship. The evidence must specifically establish beyond a reasonable doubt that Jay and Joan Leavitt entered into an unlawful agreement to manufacture or distribute amphetamine, as I have

previously explained to you.

"Evidence that Joan Leavitt was merely aware that her husband engaged in unlawful activities, or evidence that she aided him or participated with him in the ordinary activities incident to a marriage is not sufficient, standing alone, to establish a conspiracy. Also, there was no obligation on her part to take affirmative steps to prevent her husband's illegal actions or to inform the authorities that he was engaged in them.

"These same general principles respecting the law of conspiracy should also govern your deliberations as to whether Joan Leavitt entered into a conspiracy with other defendants or conspirators and whether the other defendants conspired among themselves or with others. These special instructions respecting your deliberations as to any possible conspiracy between Jay and Joan Leavitt are necessary because of the special nature of the marital relationship.

"There has been testimony and evidence in this case from which it could be found that Daniel George acted as a supplier of technical information, laboratory equipment, and chemicals to persons engaged in the manufacture of amphetamine and methamphetamine.

"In this regard, I charge you that a person who sells and supplies essential technical information or equipment to persons engaged in a drug conspiracy may not, himself,

(Transcript Page 1220)

be found guilty of conspiracy, unless there is proof that he knew that the persons he was supplying were, in fact, engaged in a conspiracy. Moreover, you may not infer that the seller or supplier knew of the conspiracy merely from evidence that he knew that the information and equipment supplied would be used for illegal purposes. There must be evidence which satisfies you beyond a reasonable doubt that the seller, in some sense, promoted the venture himself, made it his own, or had a stake in its outcome.

"If you find that Defendant George knew that the chemicals, chemistry formulas and laboratory equipment he was supplying would be used for illegal purposes, this evidence, standing alone, would not sustain a finding that Defendant George knew that a drug conspiracy existed, or that he intentionally joined such a conspiracy. In order to find him guilty, you must find that George knew of the conspiracy and agreed to join it. In this regard, you may consider the degree to which he may have promoted or encouraged the conspirators' activities, the profits, if any, that he may have obtained, the clandestine or secret nature of the transactions themselves, and any other evidence which may bear upon his participation in the conspiracy.

"The Government has charged that a number of overt acts were performed by various conspirators in furtherance of the conspiracy. You may consider proof of any overt

acts in determining whether a conspiracy existed or a particular defendant participated therein, but it is not necessary for the Government to prove any of the overt acts listed in the indictment in order for the offense of conspiracy to be complete and for that reason, I am not going to read them to you.

"In considering the elements of the offense of conspiracy, as I have stated them above, you may consider all of the evidence in the case. After considering all of the evidence, if you find that each of the elements of the offense of conspiracy has been proved beyond a reasonable doubt with respect to one or more defendants, then you must return a verdict of guilty as to those defendants. If, however, you are not convinced beyond a reasonable doubt as to the guilt of the defendants, then you must return a verdict of not guilty as to all defendants."

Does that answer your inquiry, Mr. Foreman?

FOREMAN BELANGER. I am sure it does.

THE COURT. Then the Court will stay on the bench and you may retire to the jury room.

(The jury left the courtroom)

THE COURT. Assuming the jury goes to dinner, I would assume it would take them at least an hour and a half, which would mean they would return to their deliberations about seven o'clock. So, I suggest that counsel can have the

(Transcript Page 1222)

same dinner hour and be back around 7:00. That will be adequate with the Court. We'll stand in recess.

THE COURT. Mr. Cosgrove?

MR. COSGROVE. No additional grounds, your Honor.

THE COURT. Mr. Sacher?

MR. SAXER. No objection.

THE COURT. No objection. All right, we'll admit "3" and "3A".

(Government's Exhibits "3" and "3A" were received in evidence.)

MR. SAXER. I have no objection to the physical presentation of the cassette. We don't know what it will say and may object.

THE COURT. Counsel come to the bench, please.

(At the bench)

MR. FISHER. I don't want to appear to the Court as a Jack in the Box.

THE COURT. You may have an objection to this line of questioning.

MR. FISHER. Thank you your Honor.

THE COURT. I am assuming as we go along in this matter, an objection by any counsel will be the objection for all counsel, or all parties, unless counsel specifically state that they don't want to be included in this, and this will preclude the necessity of jumping individually to your feet to urge individual objections. Now Mr. Fisher just stated

(Transcript Page 47)

he would like a continuing objection to this line of inquiry. I have allowed that. I will remind counsel this is subject to being connected up by the Government at a later time. If for any reason it is not, the Court expects counsel at that time to renew their objections.

(End of discussion at the bench.)

MR. O'NEILL. The Government requests at this time an opportunity to play Government's Exhibit Number "3A".

THE COURT. You may do so.

MR. SAXER. I am a little worried. These tapes presented to me were not dated. I have some objections, I think, your Honor.

THE COURT. Did you make that known, Mr. Saxer, to the Assistant United States Attorney?

MR. SAXER. I believe I did.

MR. O'NEILL. I believe they are dated. I believe the one made available is dated.

THE COURT. Certainly, that is something easily ascertainable, Mr. Saxer, if there is any difficulty, or you claim you have not heard this tape. When you hear it, approach the bench and bring it to the Court's attention.

MR. SAXER. We haven't heard all the tapes. I don't know which is which.

THE COURT. You are about to find out which is which.

Q And, Wayne Holden knew it?

A. Right.

Q During that year and a half, you still socialized with Wayne and Norman?

A. Yes, I did.

Q You still talked drugs?

A. Very rarely, not involving myself, no.

Q But, you did talk drugs?

A. They told me about things they were doing, yes.

Q The fact of the matter it was quite a bit of your conversation?

A. Pretty much, yes.

Q So, wouldn't it be strange in 1972 you were talking drugs?

A. Not at all.

MR. HUGHES. No further questions.

THE COURT. Mr. Cleveland?

MR. CLEVELAND. I have some questions.

RECROSS EXAMINATION

Q (By Mr. Cleveland) Have you met my client, Daniel George?

A. No, I haven't.

Q Consequently, you have not taken dope with him, sold him drugs, bought drugs from him or any other dealings that were drug related?

A. No, I haven't.

MR. CLEVELAND. Thank you.

disbursed and each went out his own way.

Q Did you leave alone?

A. Yes.

Q Did you receive any of the finished product?

A. No, I didn't. I was arrested soon after, I guess a week afterwards for sales to Wayne Drew.

MR. HUGHES. I have no further questions.

THE COURT. Mr. Cleveland?

CROSS EXAMINATION

Q (By Mr. Cleveland) Mr. Boyd, do you know my client, Daniel George, seated next to me?

A. No, I don't.

Q Ever meet him before?

A. No.

Q Ever dealt in drugs with him?

A. No.

Q Ever bought any drugs from him?

A. No.

Q Sold any to him?

A. I don't know anything about him.

MR. CLEVELAND. Thank you.

THE COURT. Mr. Fisher?

CROSS EXAMINATION

Q (By Mr. Fisher) When was the last time you used narcotics?

A. Used what?

Q At that point in time, who was involved in those transactions besides yourself?

A. Myself, Jay Leavitt, Gary Leavitt and Marilyn Sweeney.

Q Without going into details as to you and Leavitt, what were the roles of Gary Leavitt and Marilyn Sweeney?

A. Gary Leavitt purchased the amphetamines in Montreal and Marilyn Sweeney and Gary Leavitt smuggled them across the border secreted in the tire rim, wheel rim and frame of automobiles.

Q How long did this take place. Over what period of time?

A. Two or three times a month, at least.

Q How long did the trips to Montreal continue?

A. For about a year.

Q Was there a point in time in approximately the late part of 1973 when you began making trips to Toronto, Canada?

A. Yes, there was

Q What was the purpose of those trips?

A. To locate a new source of amphetamine because the supply in Montreal had been extinguished.

Q And was a supply located?

A. Yes, the supply was located in Toronto.

Q Thereafter, how frequently did you go to Toronto?

A. About, oh, twice a month.

Q And what was the basic method of operation in Toronto without going into great detail?

A. Basically, the same. I would fly to Toronto, register at a motel, Mr. Leavitt came to my suite, show me a sample of the drug to be purchased, I would give him a determined amount of money we had agreed upon, fly back to the United States and await the arrival of the drugs.

Q How would you and Mr. Leavitt split the amount imported?

A. Generally, he took two-thirds and I took a third, or fifty-fifty.

Q Now, who else was involved in importations from Toronto?

A. Wayne Holden from Vermont and Duane Harris from Vermont.

Q At this point in time, had you met Mrs. Joan Leavitt?

A. Yes.

Q Did she have any role in any of the activities you described so far?

A. No.

Q At this point in time, had you met Dan Pappalardo?

A. No.

Q At this point in time, had you met Daniel H. George, Jr.?

A. No.

Q Was there any point in time when any of your trips through from Canada touched into Vermont?

A. Yes, on two occasions.

Q Very basically, what happened on those occasions?

A. On one occasion I had a suite at the Ramada Inn down

the road here, and I awaited the arrival of Gary Leavitt and Marilyn Sweeney. They arrived at the Ramada Inn and informed me they had been followed across the border. I was to travel up Interstate 89 north of Burlington on the southbound lane and go to the first rest area where they would transfer the amount of amphetamine. So I rented an automobile and gave them a certain amount of cash.

Q Did this take place?

A. Yes, this took place.

Q And, who had told you you would meet with Marilyn Sweeney and Gary Leavitt?

A. Jay Leavitt.

Q Did you have another meeting in the Burlington area?

A. Yes, I had a suite at the Holiday Inn and met with Jay Leavitt.

Q Did another distribution take place there?

A. Yes.

Q Would those both have been in 1973?

A. That is correct.

Q What were you doing with the amphetamine you were receiving from the Canadian sources, yourself?

A. I was distributing it in the Boston and South Shore areas in Massachusetts.

Q Did Mr. Leavitt indicate what he was doing with his share?

A. Yes, distributing it north of Boston.

Q Now was there a point in time when the source of supply in Toronto dried up?

A. Yes, that did occur.

Q What was there, a precipitating event?

A. It was the arrest of Wayne Holden which started a chain reaction.

Q Do you recall roughly when that was?

A. That would be approximately in 1973, the latter part of 1973.

Q Did you continue the relations with Mr. Leavitt?

A. Yes, I did.

Q And, did you obtain a source of amphetamine thereafter?

A. Yes, Mr. Leavitt then found a new source in the Boston area, Michael Prebble.

Q What type of dealings did you have with Mr. Prebble?

A. We purchased quarter pound lots from Mr. Prebble of amphetamine.

Q What was the price?

A. We were paying \$600 per ounce for pure---

MR. SAXER. I am having difficulty hearing the witness.

THE COURT. Did you get the last answer?

A. We were purchasing quarter pounds of amphetamines from Mr. Prebble at the price of \$600 per ounce of pure amphetamine.

Q Was there any discussion of what the source would be?

A. Yes. Mr. Amero informed me one of his associates, Linwood Lamotte, was an accomplished chemist.

Q Did you have dealings with Mr. Lamotte in the dealings of amphetamine?

A. Yes, we did.

Q Describe your first experience.

A. Our first experience was that he made, manufactured a batch of amphetamines for us from a bottle of chemicals we had purchased through Peter Amero.

Q What was the quality of the Speed?

A. A poor quality; a lot of impurities.

Q How much did you pay for the P2P?

A. We paid \$600 for that bottle of P2P.

Q Did you do any other manufacturing with Mr. Lamotte?

A. No. We found him totally uncooperative and unreasonable in prices.

Q Thereafter, did you develop another source?

A. Yes. We persuaded James Pratt and Peter Amero to introduce us to the source they were receiving chemicals and equipment and their drugs.

Q Who did they introduce you to?

A. To Daniel George, Jr., of Gloucester, Massachusetts.

Q And, was any fee involved, any type of fee involved, in that introduction?

A. Yes. We paid them a fee of twenty-five hundred dollars for the introduction.

Q When you say "we", who do you mean?

A. Jay Leavitt and myself.

Q How was the fee of twenty-five hundred dollars arrived at?

A. It was a figure that was given to us by three individuals.

Q And, what denominations did you pay the twenty-five hundred dollars?

A. We gave them five hundred dollar bills.

Q Who did you give it to?

A. Peter Amero and James Pratt.

Q What was it to cover?

A. The introduction to Daniel George and their fee.

Q Was there any equipment of any type involved?

A. Not at that point.

THE COURT. We'll take our noon recess, Mr. O'Neill, at this point. We'll resume at 1:30. Ladies and gentlemen, please don't discuss the case with anyone during the noon hour.

(Court recessed from 12:00 noon - 1:30 p.m.)

KENNETH T. LOFTY resumed the stand for further direct examination.

THE COURT. Mr. O'Neill.

Q (By Mr. O'Neill) Mr. Lofty, I think one of the last

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questions I inquired about prior to the noon recess was the fee of twenty-five hundred dollars you had paid. I am not sure where I left off. I will backtrack. Who did you pay the twenty-five hundred dollar fee to?

A. It was given to Peter Amero and James Pratt.

Q What was the purpose of the twenty-five hundred dollar fee?

A. The purpose was to give them a certain fee for meeting Mr. George. They were to receive a thousand dollars of the twenty-five hundred dollars.

Q What was to happen to the other fifteen hundred dollars?

A. That was to go to Mr. George for the introduction and initial shipment of equipment and chemicals.

Q Did you, thereafter, have occasion to meet Mr. George?

A. Yes, I did.

Q Where did this meeting take place?

A. In Gloucester, Massachusetts at a home on Marsh Road.

Q Did you make further payments thereafter to Mr. George.

A. Yes, I made another fifteen hundred dollar payment to him.

Q Now the first time you met Mr. George, what discussions did you have with him?

A. We had discussions about the making, manufacturing of methedrine and also the synthesis of phenyl two propnone, also called P2P.

there at Wingaersheek Beach?

A. Pink crystaline rock.

Q What was done with it?

A. Mr. Leavitt took fifty per cent of the product; I took fifty per cent of the product yield.

Q What did you do with your part?

A. I went to the South Shore and distributed it to my respective customers.

Q And, did Mr. Leavitt tell you what he was doing with his?

A. He said only that he would be going to the North Shore.

Q During this period of time, were you having any dealings with the Holden brothers?

A. Periodically, sporatic dealings.

Q What type?

A. They would pick up an ounce or two from me if they could not contact Mr. Leavitt, and I would take their money and equipment and relay it to Mr. Leavitt.

Q And, were you obtaining any chemicals or equipment during this period of time?

A. Yes, from Mr. George.

Q How were you obtaining it from Mr. George?

A. Same procedure. We were giving him our rented vehicle and the money, and he would pick up and deliver the chemicals to us.

Q It was your vehicle?

my presence.

Q And, were you incarcerated for any length of time?

A. No.

Q What did you do after being released by the police?

A. I returned to the Wingaersheek laboratory and informed Mr. Leavitt what had happened.

Q And, what effect, if any, did this incident have on your relationship with Mr. Leavitt?

A. It started a shift in our relationship. It was beginning to become strained.

Q And, what effect did this have on your relationship, if any, with Mr. George?

A. Oh, my relationship with Mr. George was also becoming strained.

Q Could you observe any change in the relationship between Mr. George and Mr. Leavitt?

A. Yes, they were becoming very much close.

MR. CLEVELAND. Pardon me, may I have the answer read back.

(The reporter read the last answer)

Q (By Mr. O'Neill) Was there a shift in relationship of any different division of the production of Speed?

A. Yes. Mr. Leavitt, at this point, was taking two-thirds of a yield, and I was only getting one-third of the yield, approximately.

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A. Yes.

Q. How did the sounds reproduced over that tape compare with the conversation you had on the telephone?

A. It was the identical conversation.

Q. Were there any threats or promises of any kind to induce you to make this tape?

A. No.

Q. What did you do with the tape following the completion, after you listened to it?

A. The Burlington agent took it and marked it.

DEPUTY CLERK CURRAN. Government's Exhibit "24" for identification is a plastic bag with a tape enclosed with a cassette.

Q. (By Mr. O'Neill) Mr. Lotfy, I show you what is marked as Government's Exhibit "24". Just from observation, how does it appear to compare with the cassette you saw removed from the machine on that date?

A. That is a similar tape cassette.

Q. You, yourself, did not retain the custody of that cassette?

A. No.

Q. During the period of time you knew Mr. Leavitt, approximately how many pounds of Speed were you aware of he was either importing or distributing?

A. I would say during our relationship, approximately a total of about 325 pounds of methedrine was handled between

the two of us.

MR. O'NEILL. I believe that is all we have at this point in time.

THE COURT. We'll take our afternoon recess at this time, and at this point in time, Mr. Cleveland, would you and your client go over the two exhibits.

MR. CLEVELAND. Yes, your Honor.

(Court recessed from 2:50 - 3:10 p.m.)

KENNETH T. LOTFY resumed the stand.

THE COURT. Do you have any objection to Government's "23" and the other one was "22, Mr. O'Neill?

MR. O'NEILL. That is correct, your Honor, and also "23A", "B," and "C".

THE COURT. Well, I am talking now, Mr. Cleveland on "22" and 23".

MR. CLEVELAND. Your Honor, I have no objection to any of "22," 23," "23A, B & C" if they are offered in connection with the witness's testimony and not for the truth of the statements therein.

THE COURT. Well, they will be accepted in connection with the witness's testimony. Show "22" and 23" to Mr. Cosgrove. Any objection to "22" and "23," Mr. Cosgrove?

MR. COSGROVE. No, your Honor

THE COURT. Mr. Saxer?

MR. SAXER. No objection.

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Q And, was that for your own personal use?

A. It was for my own personal use and it was in transport to Mr. Leavitt, if you check back through my testimony.

Q And, had you used any portion of that?

A. No. It was a sealed ounce.

Q I see, and at this point in 1975, how would you describe your personal use of amphetamines?

A. I would say at that point it was moderate to light due to the scarcity of the availability of amphetamines.

Q I thought you said you and Mr. Leavitt manufactured 325 pounds?

A. We didn't use all 325 pounds ourselves.

Q But, you had the availability, didn't you?

A. It was either feast or famine in batch lots. It would go three or two days and then be a drought for thirty or forty days.

Q I see. Now where did this charge of possession of amphetamines occur? Was that a federal or state charge?

A. Which one?

Q The last one, 1975, November 13th.

A. No, that would be a state charge because it was an attorney of the district court of the Commonwealth of Massachusetts.

Q Did you ever appear for an arraignment at the district court?

which he sold me.

Q Okay, he would buy methedrine?

A. He would purchase in Canada.

Q And, you would buy it from him?

A. I would buy it from him.

Q Did you ever pool your money to buy a quantity of methedrine and come down to this country and each take half and sell it?

A. We pooled our money, but not on a 50/50 basis. On several occasions it was usually two-thirds to one-third relationship.

Q Aside from securing your own investment, did you also act as advisor to Jay Leavitt as to whether the goods were of high quality or purity?

A. Mr. Leavitt usually acted as an advisor to me, being in the field longer than I had been. He knew more as to the Canadian quality of the Methedrine.

Q Did he perform tests on it?

A. Yes, he did.

Q So now I think you testified you went up there through your investment to make sure it was pure?

A. That it was suitable, yes; that I was satisfied.

Q Does that indicate to me you didn't trust Jay Leavitt at this time?

A. You might say that, yes.

A. Yes.

Q And, Lynwood Lamare?

A. Yes.

Q Did you subsequently meet with them?

A. Mr. O'Hanley introduced me to Mr. Lamare, who subsequently introduced me to the other two, yes.

Q And Mr. Lamare, was he a chemist?

A. Yes, he was a chemist.

Q Did you enter into negotiations with him?

A. Yes, I introduced him first to Mr. Leavitt and we decided we would do negotiations with him.

Q How was that going to work?

A. It was going to be a joint effort, a 50/50 relationship between Mr. Leavitt and myself, and there would be a 33-1/3 split between Mr. Lamare, Leavitt and myself.

In other words, Mr. Leavitt and I would put up the cash on a 50/50 basis, and the return would be split three ways between Leavitt, myself and Lamare.

Q What was Lamare's duty?

A. His duties were to have the contact, the chemicals and equipment through Mr. Amero and Mr. Pratt, who would supply him with chemicals and equipment from Mr. George, through these two individuals, which would then go to Mr. Lamare who could synthesize the methedrine for myself and Mr. Leavitt.

Q Leaving aside, for the moment this long continuity chain of people, you haven't talked to yet as to what Mr. Lamare was to do.

A. Synthesize the methedrine.

Q For that, he was going to get 33-1/3 per cent of the proceeds?

A. Right.

Q And, you were supposed to get 33-1/3?

A. Yes.

Q And, Jay Leavitt the same?

A. Right.

Q All you were going to do, you and Jay Leavitt, were going to do is supply the money for the materials and the chemicals and Lynwood Lamare would supply the expertise?

A. Yes.

Q And, he was going to make it?

A. Synthesize it, yes.

Q And, you were going to take the product and sell it?

A. That is correct.

Q Did you do that?

A. Yes.

Q Over how long a period of time?

A. On one occasion only.

Q One occasion.

A. Yes.

(Transcript Page 465)

reciting for the jury here yesterday and today?

A. I read a copy of my grand jury testimony, yes, and I can see a lot of inaccuracies due to the tremendous amount of testimony which I gave before the grand jury, in a period of 1-1/2 hours.

Q In other words, you remember better now what happened to the twenty-five hundred dollars than you did January 8th?

A. Going over the sum total of my testimony, certainly I do. Everything was crammed into 1-1/2 hours; 51 type-written pages. That is quite a bit of testimony to be given in that period of time. So there could be some confusion on my part.

Q You did, in fact, say to the grand jury twenty-five hundred was paid in it for Mr. George, but now you are telling us that twenty-five hundred dollars was not paid for Mr. George, but only a portion of that?

A. That is correct.

Q I see, and what you are saying today is the truth, is that correct?

A. Absolutely.

Q What you said before the grand jury was not the truth?

A. It wasn't a mistruth, it was an inaccuracy.

Q Did you ever pay any money, personally, to Mr. George?

A. Yes, I did.

Q How Much?

A. Sum total, you want?

Q Yes.

A. Several thousands of dollars. I didn't keep a ledger.

Q You don't know how much you paid?

A. I, myself, personally, handed Mr. George twenty to thirty thousand dollars.

Q Could you recount for me, step-by-step?

A. I said I did not keep a ledger.

Q You just remember some facts, but not others?

A. Approximately twenty to thirty thousand dollars over a period.

Q Just a minute, there is a ten thousand dollar difference-- twenty to thirty thousand.

A. It was such a large amount of chemicals and equipment and transactions, you know.

Q It just sort of slipped your mind?

A. It didn't make a difference. My things were too hectic to keep a record.

Q You remember specifically about the twenty-five hundred dollars, even how it was to be broken up?

A. Absolutely.

Q But you don't remember how much to paid Daniel George?

A. No. When you are meeting people five or six times a week over a period of a week, unless you have a mathematical computer running in your head.

Q Somewhere in the neighborhood.

A. I can break it down and say twenty-five to thirty thousand, if you want me to zero in on it more closely for you.

Q Did you, personally, receive chemicals and supplies from Daniel George?

. Yes, I did.

Q What chemicals and supplies were they?

A. What chemicals and supplies were they?

Q Yes.

A. Do you want a generalization or exactly what they were?

Q I would like to have the list, generally, of the supplies and equipment.

A. I received the two vacuum system setups from Mr. George; several distillation apparatus, two reflex condensers, myriad number of beakers, flasks, containers, tubing, rubber hosing, crocks, the materials under "A" "B" "C", "D", "E" and hydrochloric acid, sulphuric acid, sodium doxright pellets, dextrose, lactose and others.

Q Are any of those controlled substances?

A. The chemicals?

Q Yes.

A. No

Q Did he ever sell you a controlled substance?

A. Not per se, no.

Q Didn't he, in fact, tell you on numerous occasions that he didn't even want to be associate<sup>d</sup> with drugs and controlled substances?

A. He didn't want to be in the presence of drugs, he stated.

Q He did not even want to have an association with them, did he?

A. Well, he obviously had an association with them. He was giving us precursors to manufacture drugs.

Q Didn't he specifically tell you that he did not want to have an association with the manufacture of drugs and didn't he especially amplify that time and time again by not wanting to be present?

A. No, absolutely not. He never made the statement that he wanted no association with drugs. He never made such a statement.

Q Didn't he, time and time again, by his actions and his words tell you that he did not want to be associated with the drugs involved?

A. He said he didn't mind being associated with a clandestine laboratory, but he didn't want to be present.

Q Will you answer my question?

A. No.

Q By his actions, he did, in fact, show you that he did not want to be associated with drugs by specifically telling

you he did not want to be involved when you were making drugs?

A. The answer is still no.

Q Didn't you say in your direct testimony that he specifically said that he did not want to be around when you were making this so-called product?

A. He did not want to be present. You have asked me a different question now. The answer to it would be yes to that question.

Q Didn't he also tell you specifically that what you did with the knowledge he may have imparted to you was your business?

A. Yes, he did.

Q That he didn't want to have anything to do with anything illegal; that is, if you wanted to do that, that was your problem?

A. He told me that would be his defense.

Q He told you that would be his problem too, didn't he?

A. Yes, he did.

Q Was he present when you manufactured Speed?

A. No, not Speed.

Q Didn't his instructions, if they were instructions in chemistry, center around normal laboratory procedures?

A. No, they were very highly specialized laboratory procedures specifically for the manufacture of methedrine and

phenyl 2 propion.

Q But you said he never manufactured methedrine.

A. I am talking about the instructions that he gave me.

Q But, he was never present?

A. He was never present, but the instructions he gave me are specialized instructions for the manufacture of methedrine.

Q I hand you Government's Exhibits "23A," "23B and "23C" and ask you to tell me what it is. (Handed to the witness)

A. These are the instructions that Mr. George gave me for the manufacture of methedrine; when we met in person he would use the terms "methedrine" and drugs, but instructed me never to write them down on any notes as such, and would I please just use the term "product," "ketone" and "A2E". If these laboratory notes were brought to a qualified chemist, they would only pertain to the one special drug, methedrine. These are not general notes. These are highly specialized notes for the manufacture of one drug, methedrine, and none other.

Q That is what "23A," "B" and "C" is?

A. Absolutely.

Q That is for the manufacture?

A. Yes.

Q The product of this would be methedrine?

A. Absolutely.

Q How about the health food spots like Nature Health Food Center in Danvers?

A. I remember the Stearns place; I believe there was another place we went to in Medford. Perhaps your notes are inaccurate as to the locations. The store names, however, are accurate.

Q Were you aware that Daniel George virtually put nothing in his mouth that was not organic?

A. No.

Q He did not make an issue of that to you?

A. Not that exclusively that anything not organic; he said a lot of his diet was.

Q Did you know from your own experience from observing him? Did you ever see him eat anything not organic?

A. Yes, I did.

Q Tell me what that was.

A. He had several, several desserts; pastries.

Q So he slipped sort of some times?

A. Sure, he did.

Q Something we are all familiar with, myself particularly. I would like to go over a couple other areas. I believe you testified in your direct examination you were beginning to fall out with Jay Leavitt. He changed the formula for you splitting the proceeds to two-thirds, one-third, and he took two-thirds?

A. Yes.

Q Previous to that, it had been 50/50?

A. Yes.

Q So when you were dealing with Lynwood Lamare, it was one-third, one-third, one-third, then 50/50 and then two-thirds, one-third?

A. Yes.

Q You getting the one-third?

A. Yes.

Q Was that continuous in your operations with Leavitt during that period of time that you would share a proceed of your chemistry 50/50?

A. Yes.

Q Now, you didn't make the same arrangement with Daniel George that you made with Lynwood Lamare, is that correct?

A. That is very correct.

Q So he wasn't getting a third of the proceeds of the sale here, was he?

A. Not from the sales, no.

Q And you were just telling him to go when you needed chemicals and supplies to go into Boston and bring them back to you, and you gave him money in advance?

A. We didn't tell him where to go. We gave him the money before he went to where his contacts were.

Q And he brought you back chemicals, not controlled

Substances?

A. Yes.

Q And how did you meet? Let's say you were to pick up the chemicals from Mr. George, where would you meet him?

A. In the morning that he was to go into the city to pick up the chemicals, he would tell us where; arranged to meet in the parking lot of a motel, a rest area on the highway, whether he would come directly to the laboratory location. They were always different.

Q Always different?

A. We never used the same place twice.

Q Were they always in some place that was away from the area you were manufacturing the chemicals?

A. No, he came to the laboratory, as I said, many times.

Q He came to the laboratory.

A. With supplies many times, after his excursions into the city to get the supplies.

Q And would come back directly to the laboratory?

A. Yes.

Q And he would use his own car or yours?

A. He always used our vehicle, or a rented vehicle which we supplied.

Q Okay. You would meet him in some parking lot in a town outside Boston, a town near where he may have picked up the supplies?

A. Mr. Leavitt had sole ownership in the Laboratory in 1975.

Q Is that why you broke down your relationship to two-thirds, one-third?

A. That is correct.

Q So the proceeds then of your illicit activity with Mr. Leavitt was divided 50/50 up to the point that he took over the laboratory, and then two-thirds, one-third?

A. Right.

Q When did he take over the laboratory all by himself?

A. He took over the laboratory around September or October of '74.

Q And from that point on he was just handing you whatever amount of amphetamines you would require and you paid for?

A. And I paid for, yes.

Q So, your phone call to Jay Leavitt, your concern about where Jay Leavitt was, was not because you wanted more amphetamines to sell?

A. That particular telephone call, no.

Q Why would you be concerned if you were no longer manufacturing if Jay Leavitt was going to be in trouble?

A. I think the overall situation involved me.

Q How so?

A. Because of my past association with the Holdens and Mr. George and Mr. Leavitt.

gives us the knowledge you now understood this procedure pretty well?

A. No, no. It is a custom reaction.

Q As opposed to a regular reaction?

A. Right.

Q So you knew the new answer then, is that correct?

A. Right.

Q Let me read you some testimony from the grand jury.

"Question. What was the reason to give oral dictation in preference to trying it out himself? Answer. He was only tutoring me in chemistry. What I then did was up to me whether is used it illegally or legally." Was that an accurate statement of your grand jury testimony?

A. That was an accurate statement for me and that was his answer.

Q Wasn't that consistently his answer?

A. That was consistently his answer, yes.

MR. CLEVELAND. No further questions.

THE COURT. Mr. Cosgrove?

CROSS EXAMINATION

Q (By Mr. Cosgrove) Mr. Lotfy, you said you made some trips to Canada, is that correct, at some point?

A. Yes.

Q That was Toronto and Montreal?

A. Yes.

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A. About three years ago.

Q Would one of the topics you discussed with this psychiatrist have been your sexual preferences?

A. No.

Q Now we can see in your testimony yesterday that you are an educated man, is that correct?

A. Yes.

Q Five years of school?

A. Yes.

Q And you appear, in some respects, to lead everybody to believe you have an excellent memory, is that true?

A. That wasn't my intention. I have an average memory.

Q Your testimony shows you are, in fact, a drug dealer?

A. Yes.

Q Drug addict?

A. Yes.

Q Throwing your pharmacy license away?

A. I didn't deliberately throw it away, no.

Q In fact, from your testimony, you are, indeed, a criminal isn't that so?

A. Yes.

Q No small criminal at that, isn't that so?

A. That is your opinion.

Q Well, I believe you gave testimony that you were involved in an operation with Jay Leavitt that over the years

produced 325 pounds of methamphetamines of one sort or another. Is that your testimony?

A. That was not my testimony.

MR. O'NEILL. We wish to object that he is a large criminal. The acts he has been involved in speak for themselves. It is hard to characterize them, under the circumstances.

THE COURT. We have gone by the question.

Proceed, Mr. Saxer.

Q (By Mr. Saxer) 325 pounds, is that your testimony?

A. Yes, it was.

Q \$5,000 a pound, roughly?

A. Average.

Q Is that a million and a half dollars?

A. That is right.

Q No small criminal?

A. No.

Q Now in 1971 and 1972, and my notes are a little confused, possibly 1973, although I may be wrong, you were doing this smuggling thing, as Mr. Cosgrove pointed out, with Jay Leavitt from Canada, is that correct?

A. Yes.

Q During this time, your testimony was that you were the money man, that you put up the dough, is that correct?

A. Yes.

(Transcript Page 529)

Q Did Mr. George ask you if you had ever done this before?

A. Yes, he did.

Q What was your response?

A. I said I had, and after every time I made my product, I destroyed the equipment.

Q Did you ever talk equipment with Mr. George?

A. Yes, I did.

Q What conversation did you have?

A. I asked him if he could supply me with glassware to manufacture a product, and he said he could.

Q Did you indicate what you had done with your equipment that you had used previously?

A. I stated I had broke it all up so I wouldn't be detected.

Q Did there come a time when you asked Mr. George what his occupation was?

A. Yes, there was.

Q What was his response?

A. Mr. George stated to me he had an Associate Degree from Franklin Institute in Boston and that he often tutored chemistry to varicus high school students in the area; he also stated that he did do research work and would supply chemicals and other apparatus for individuals when they desired to purchase it from him.

Q Did he ever ask you why you didn't buy the chemicals your-

(Transcript Page 704)

any available chemistry jobs in the area in case I could not make any product, and I had to do something legitimate for awhile. He said there was, but he refused to tell me the name of the company.

Q During this conversation did Mr. George, or did you ever ask Mr. George where he was doing his chemical work?

A. Yes, I did. George stated to me that he did his chemical work for various companies, college laboratories, and instances the companies didn't know he was utilizing their laboratories.

Q Were there any other conversations during this period of time?

A. Yes, sir; that I would contact him if I was still interested in purchasing chemicals from him.

Q Did you ever contact him?

A. No, I did not.

MR. HUGHES. No further questions.

CROSS EXAMINATION

Q (By Mr. Cleveland) Is cocaine a synthetic product?

A. It is a synthetic.

Q Yes. Do you know how to make it?

A. I can make it, yes.

Q You can?

A. Yes.

Q It is not natural?

.. Myself, Special Agent Hosty, a student trainee with our bureau at that time, John Donnelly, and Mr. George.

Q Approximately what time did you arrive at the United States Courthouse in Boston?

A. I believe around 6:30.

Q Do you recall what time Mr. George was taken before the United States magistrate?

A. No, sir.

Q Approximately how long does it take normally driving in a straight line in normal driving conditions to get from Rockport to Boston?

A. Approximately an hour.

Q Was there another two hours in processing and things of this nature along the way?

A. Yes.

Q Were there any questions asked of Mr. George on the trip to Boston?

A. Yes, sir, there were.

Q First of all, with respect to being a chemistry tutor, were questions asked along that line?

A. Yes, sir.

Q What did Mr. George indicate in that respect?

A. He indicated he was a chemistry tutor again, and that he had schooled certain individuals, Joseph Genest, Jay Leavitt and Kenneth Lorfy; he further stated that the

teachings were done in two phases; one, theoretical phase involving formulas and the second phase was a laboratory phase involving practical laboratory work.

Q Did he say anything concerning any type of course he ever taught, especially to Mr. Lotfy, that can be generally described?

A. He said the course was taught as a refresher course to Mr. Lotfy to enhance his pharmaceutical expenses.

Q Was there any description of the nature of the course that was taught to Mr. Lotfy? Was there any description of the nature of the course taught to Mr. Genest and Mr. Leavitt?

A. I understood it to be the same, but he did not specify.

Q What did Mr. George say concerning where he had taught the course?

A. He stated that the laboratory phase of the course was taught wherever Mr. Lotfy could rent a suitable location.

Q Did Mr. George say anything about the types of persons he would teach chemistry to?

A. He said he would only teach chemistry to those individuals who would not use it as an illegal act, and those people who would not use it for the process of making dangerous drugs.

Q Did he say anything concerning whether he would teach it

to students who had criminal records or reputations?

A. He said he would not.

MR. O'NEILL. I believe that is all we have,  
your Honor.

MR. CLEVELAND. No questions, your Honor.

MR. COSGROVE. No questions, your Honor.

THE COURT. Mr. Saxer?

MR. SAXER. No questions.

THE COURT. All right, Mr. Elliot, you may  
step down.

(Francis James Elliot left the courtroom and  
a new witness entered.)

ANTHONY FONSECA, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) Can we have your name, sir?

A. Anthony Fonseca.

Q How are you employed, Mr. Fonseca?

A. I am employed as a forensic chemist in the Drug Enforcement Administration, Northeast Regional Laboratory, New York City.

Q How long have you been so employed by the D.E.A?

A. I have been employed a total of six years. This includes the predecessor agency.

Q What was that agency?

A. Bureau of Narcotics and Dangerous Drugs.

Q And, in addition to chemicals which would be used to manufacture amphetamine and methamphetamine, are there also chemicals on there used to manufacture phenyl 2 propion, or P2P?

A. In the whole---

Q In the entire group.

A. Yes. Yes, I believe there is.

Q Specifically, is there reference at some point in time-- you don't need to go through it at this point--to a phenyl ascetic acid?

A. Yes, I believe we did locate that.

Q What is phenyl ascetic acid?

A. That would be used to make P2P.

MR. O'NEILL. I believe that is all we have at this point in time, your Honor.

THE COURT. Mr. Cleveland?

CROSS EXAMINATION

Q (By Mr. Cleveland) Could you tell me what on your analysis of the various drugs which you have testified to that came into your laboratory, what it means when it says 26.7 strength?

A. Yes, 26.7 per cent. That is the strength of the amphetamine hydrochloride in that particular exhibit.

Q Compared to what?

A. Compared to 100 percent. In other words, there is

something else there.

Q. I see, and is the standard amphetamine that you use, is that 100 per cent strength?

A. Yes.

Q. Where do you get that standard amphetamine from?

A. From--we purchase it from one of the chemical companies that make reference---

Q. I don't know what reference standard is.

A. That is pure material, pure chemical compound.

Q. How is that made?

A. You mean, how is it made chemically?

Q. Yes.

A. They would start with P2P, they would use P2P, plus formalhyde react, that goether, and this would give them the formal derivative of amphetamine, and they would reflex this and release the amphetamine and by process of isolating the amphetamine by adding hydrochloric hydrogen chloride gas and solvent like ether, they can separate out the amphetamine hydrochloride and by crystallization get it up to about one hundred per cent pure.

Q. Is that a difficult process.

A. It is relatively simple.

Q. Something you know how to do, I presume, as you just described it?

A. Yes.

Q Would anyone, capable of anyone with a chemistry background, either chemistry student or pharmacy student, be capable of doing this?

A. I would think so. You need a little practice. It is simple, yet you need some practice.

Q Now, to your knowledge, what does amphetamine come from? Is that a group known as "amines"?

A. That is correct.

Q What is "amine"?

A. "Amine" is a compound that has nitrogen in it. Actually, it is a compound that may be considered derived from ammonia.

Q From ammonia?

A. Yes.

Q And, what are amines used for?

A. They have various uses. I would think in this case this is used in preparation of the drug, or drugs. It could be used--there are numerous cases like used in making nylon; something like that.

Q Basically, is it fair to say there is a chemical group known as "amines" that have wide and diverse use?

A. I would say that is correct.

Q And, out of that group of amines it can be chemically produced further to create other things, is that correct?

A. You mean you could start with an amine and make other

chemical compounds?

Q Yes.

A. Which is something other than an amine?

Q Correct.

A. That is correct.

Q And, could you also make, I presume, because "amine" is part of the words "amphetamine", "methamphetamine" or "amines", is that correct?

A. That is correct.

Q Are they particular kinds of amines?

A. Right. Amphetamine is like a primary amine. Methamphetamine would be like a secondary amine. You could go on to teshariamine.

Q What is teshariamine?

A. That is where the nitrogen, the element of nitrogen would have three groups other than hydrogen in the sense ammonia is nitrogen with three hydrogens on it, if you replace the three hydrogens.

Q What would be the difference then in making, starting from amines and making methamphetamine and/or some teshariamines? Is there some chemistry procedure. Is there a difference?

A. You could start with the amine and get all the intermediate products, if that is what you are--you are getting all to the teshariamine.

Q Product is the end result of a chemical procedure?

A. Okay; yes.

Q And, that is basically all it means, isn't it? It doesn't mean anything other than that?

A. You could stop at a certain point, but you could go from there on and develop a new amine into other chemical compounds.

Q You could say that each one of those individual steps if you left it there, that is the desired result you wanted, you would call that "product", would you not?

A. I would have to say, yes.

Q Now getting back to the amine structure, is it true that methamphetamine or amphetamine is merely a difference of the chemical procedure from, let's say, level two to level three in your procedure?

A. No. You would have to start with a different, at least one of the reactors would have to be different.

Q Explain that.

A. You asked me how to prepare amphetamine. I told you. Now if you want to prepare methamphetamine, which you are talking about, you would have to start with P2P and the other reactant would be methylamine, or it would be methyl formalide and you would use a product procedure and end up with a major product which would probably be methamphetamine.

Q So really there is essentially a difference between them from the amine level to creating either amphetamine or

methamphetamine, is that correct? There is a difference in the procedure in doing it?

A. Difference in the reactives that you use.

Q And, a difference in the chemicals as well?

A. Essentially, the chemicals might be the same.

Q So it might be just a difference in procedure?

A. I am saying the procedure is the same, the chemicals differ just a little

Q Okay, all right. Now you have indicated that the manufacture of amphetamine is not terribly difficult. Is methamphetamine any more difficult?

A. No.

Q Again, someone with a pharmacy background or chemistry background could make methamphetamine or amphetamine?

A. I think they could.

A Could someone without a chemistry background make it?

A. If they knew how to follow a formula they might, with practice, they might be able to do it.

Q So it really isn't all that difficult to make?

A. That is correct.

Q Now, if you were told--I notice in response to the United States Attorney's questions you had occasion to look these items over; that is "23A," "23B" and "23C"?

A. That is correct.

Q And you were able to figure out that that is formula

for making amphetamine, is that correct?

A. Yes, to me that is what I would say it is, a formula for making amphetamine.

Q And also methamphetamine?

A. Yes.

Q It didn't take you very long to figure that out, did it?

A. The way it is coded--well, it didn't take very long, but you would have to think about it. You just couldn't--

Q So, in other words, this would not be used--you couldn't give this to me assuming I have no chemistry background, give this to me and say "follow these instructions and you will come up with amphetamine"?

A. I would have to ~~up~~ you out a little bit, I would think, if I was the person who prepared this.

Q But you are convinced if you used the substitutions that you feel should be substituted for certain words, or letters, that you could make amphetamine with this procedure?

A. That is right.

Q Or methamphetamine?

A. That is correct.

Q There are two separate formulae here?

A. One formulation there.

Q And, perhaps I understood you earlier, there is one formulation, but two ways or two procedures for making

amphetamine on the one hand and methamphetamine on the other?

A. The difference would be the substituted reactant.

Q And you see that these three pieces of paper cover both of those eventualities?

A. That is correct.

Q. And, where does it show how you would make methamphetamine as opposed to amphetamine.

A. Well, I don't know what his code is.

Q Okay, so really, in other words---

A. The general procedure--there is a general procedure for making amphetamine, okay?

Q Okay.

A. Now it depends on what you substitute in this as the chemicals.

Q Is it a general procedure? I guess I don't understand.

I thought you said that making methamphetamine requires specific chemicals and specific application of those chemicals, does it not?

A. I would say specific chemicals to make either amphetamine or methamphetamine.

Q Does it also require specific chemicals to make amphetamine as opposed to a plastic?

A. Yes.

Q Okay, and so what you are saying is this is, in fact, a

specific outline for making amphetamine or methamphetamine?

A. Yes, depending on what you are substituting as chemicals, yes, the specific chemicals that you need.

Q So it really doesn't tell on here what chemicals?

A. That is correct, other than the chemicals you would use like hydrochloric acid and benzene, other than those solvents and certain hydroxides, those chemicals you use anyway to produce.

Q You use these chemicals anyway in many procedures, is that correct?

A. You would use it in this procedure.

Q Would you use those chemicals in many other procedures?

A. They have the capability of being used in other procedures, I am sure.

Q What is it that made you feel that this then is a specific may of making amphetamine?

A. Because of the procedure that is outlined.

Q Starting from Point A to Point B and so on?

A. Yes.

Q When you say "procedure," do you mean transferring chemicals from one beaker to another on a Munson Burner? Is that what you mean by procedure?

A. That is part of what I mean. Also, what I mean is the direction that is being given in that particular procedure is the direction you would get if you were to make

amphetamine or methylamphetamine. It is confusing.

THE COURT. Speak louder. Your voice trails off.

MR. FONSECA. Yes, your Honor.

Q (By Mr. Cleveland) I am confused.

A. The whole thing is confounding.

Q Is it fair to say that with your considerable vast expertise, that no one will deny, that you could take this and you could construct with some suggestion that this is the procedure for making amphetamine, is that fair?

A. I would say it is a procedure for making amphetamine, yes.

Q Now, without--I may be wrong. I will withdraw the question. Do I understand what you said that you don't know what chemicals were intended to be introduced within that procedure in order to make the amphetamine?

A. That is correct.

Q And, all it is then is a procedural technique?

A. Correct.

Q Okay, and there is no way of gaining from this what chemicals are to be used?

A. Well, you could substitute certain chemicals in where he has the code, like reactive, you can substitute the specific chemicals that you could speed to prepare methamphetamine or amphetamine where he has a code like a

reactive A, reactive B, reactive C.

Q So, in other words, if you were using this procedure for making amphetamine, in place of reactant A, R, D, or whatever it is, you would put one chemical, and if you were going to make methamphetamine, you would use the other chemical?

A. In this case, probably I would say RDA is a form of acid and used in both procedures, either methamphetamine or amphetamine.

Q That clears up one thing. This is the same procedure up to a point?

A. That is correct.

Q Where does that point start to branch off?

A. RDB; possibly it could be either formamide or menan-formamide depending on whether you want to make amphetamine or make methamphetamine.

Q This is your best judgment what could be substituted in the procedure to make these two products?

A. That is correct.

Q Now is there any other product that can be made with this procedure substituting other chemicals for RDB, RDC or RDA?

A. I would think you could substitute some other product, some other chemical.

Q And, you might come up with a different kind of amine?

A. I would think so, yes.

Q And, that is also true with Government's Exhibit "22" on the typewritten part?

A. Yes. As a matter of fact, this is possibly a condensed version of that because it does refer back to those pages.

Q Now I believe you testified with regard to the back side of Government's Exhibit "22", the handwritten side in ink, that that was a formula for what, making phenyl 2 propion?

A. The way I read it, yes, this would be a procedure for making phenyl 2 propion from phenyl ascetic acid.

Q Does it clearly outline that to you?

A. No.

Q That is using your judgment to try to put in some chemicals where they should be at the specific points in the procedure?

A. That is correct.

Q Now do you have any idea how many amines there are?

A. I am sure that is a large number of amines. To come up with a number, I wouldn't be able to.

Q They are certainly not all regulated, are they?

A. That is correct.

Q So, some amines are regulated and some amines are not regulated, is that a fair statement?

A. By law, yes, sir.

Q So is it fair to characterize the procedure in "23A," "23B" and "23C" as a procedure for developing from amines to make amine derivatives of some sort?

A. Yes, sir.

Q And, that it is with absolute certainty and possible to say what amine would be produced by using this procedure?

A. May I have the question again, please?

(The reporter read the pending question.)

A. Could you rephrase your question?

Q Sure. You indicated to me that this is the raw outlines of a procedure to further develop the basic group of-- I may be inarticulate--the basic group of amines to make substructures of amines. At some point, considering there are many amines, you have indicated to me, I think, that this procedure can be used, for instance, in either making methamphetamine or amphetamine, is that correct?

A. That is correct.

Q Okay, and I believe that you also said to me that it could be used for making other amines, although unknown, is that correct?

A. I didn't mean--I would think there is a limit where you can that you could use this formula as outlined there with respect to temperatures and so there is a limit in the number of chemical compounds you can substitute in there, but you could make other than, if you want, you

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could make other than amphetamine and methamphetamine, most likely, by substituting different amines.

Q So really it is a chemical procedure to which you can add different chemicals to get certain and different products, is that a fair statement?

A. Yes.

Q And, that is true with Government's "22" as well?

A. That is correct.

Q And, would that be true of the so-called formula?

A. That is correct. Well, you are talking about the preparation of P2P, I would think that that particular--- all right; okay; ya.

Okay. Now, phenyl 2 propion we have heard in this testimony earlier, is a chemical which the Government has, at least on different occasions, tried to get chemical companies not to sell to individuals as opposed to companies. Are you aware of that?

A. All I can say is that I know it is regulated and that the distributors would notify the Government when someone purchases P2P, but this is on a voluntary basis also.

Q It is not regulated in the sense it is being illegal, is it?

A. That is correct.

Q And, phenyl 2 propion, or P2P, can be used for, you testified already, it can be used for other things other than

making methamphetamine or amphetamine. Is it true it also can be used to produce phenylamine?

A. Yes, sir, I would think so.

Q Is that a nutrient or amino acid?

A. I don't know if it is an amino acid. I guess you are correct.

Q And, in fact, P2P is something that can be used for an amino group of nutrients, in general, can it not?

A. That is right, it has its capabilities; any ketone.

Q As well as perfumes, photographing agent and plastics?

A. Yes, sir.

Q And, when a chemical supply house sells P2P, they have no way of knowing how it is going to be used.

A. I am sure they don't even ask the customer. The answer is yes.

Q Now you testified in response to the United States Attorney's questions relative to Exhibits "57" "58" and "62", "59" which were all invoices from chemical supply houses, do you recall testifying about that?

A. "62"?

Q Let me bring them up so you can see them.

A. Yes, I believe this is all equipment. I don't recall seeing any chemicals. This would be equipment. The rest would either be chemicals and equipment.

A. And, you have had a chance to review these?

A. I did see them, yes sir.

Q And, I believe you testified that after going over them that the chemicals that were involved and sold under these invoices could be used to make amphetamines, is that correct?

A. Yes, I said many of the chemicals could be used to make amphetamine or methamphetamine.

Q Could they be used for other things?

A. I would have to say, yes.

Q I mean, hydrochloric acid is not something particularly akin to making amphetamines, is it?

A. If you want to make methamphetamine, hydrochloride, yes, it is used in the process.

Q But it is used in an awful lot of other processes?

A. That is correct.

Q Benzine is not particularly chemically related to just drug manufacturing, is it?

A. No, it is a solvent used in the process.

Q How about lactose monohydrate powder?

A. Lactose is milk, sugar.

Q That is not used in the process, but it could be used to cut the material?

A. It could be.

Q Could be used for other things, too, couldn't it?

A. That is correct.

Q You will have to excuse me. I am trying to figure out how to pronounce some of these.

A. I can't pronounce them either.

Q Nitrolaethaine?

A. Yes, sir.

Q What is that?

A. That is a chemical compound. It is used to make P2P.

Q Used for other things?

A. Yes, sir.

Q It is not used exclusively?

A. Not used exclusively.

Q It doesn't say it is just characterized for making P2P, you don't characterize that?

A. No, sir.

Q How about ammonium hydroxide, what is that?

A. Ammonium hydroxide is a basic chemical.

Q You can find this in any high school-college laboratory?

A. That is correct.

Q How about phosphoric acid, what is that?

A. That is a relatively strong acid.

Q Would you find that in most high school college chemistry laboratories?

A. Yes.

Q Would the same be true of hydrochloric acid, thallium methyl nitric acid, all those things would be found in

chemistry laboratories, wouldn't they?

A. I would think so.

Q In fact, many of them you might find in a Gilbert's Chemistry Set for children, wouldn't you?

A. I doubt if the strong acids would be like nitrol acid and phosphoric acid and hydrochloric acids.

Q When you testify that these chemicals would be used for the making of amphetamines, that is just what you feel could be used.

A. That is correct.

Q But not necessarily true they were used in that way, or by virtue of the fact they were collected in these receipts that they were used that way, is that correct?

A. That is correct.

MR. CLEVELAND. Thank you. No further questions.

THE COURT. We'll take our morning recess.

(Court recessed from 10:50 - 11:10 a.m.)

THE COURT. Mr. Cleveland?

MR. CLEVELAND. I have a few more questions I forgot to ask.

THE COURT. All right.

Q (By Mr. Cleveland) Mr. Fonseca, could you tell the Court and jury what a Leuckart Reaction is?

A. Leuckart Reaction is a reaction used to prepare amphetamine and methamphetamine and some other type

derivatives.

Q Would it be fair to say the procedure outlined on these three pages, "23A, B, C" is an outline of a Leuckart Reaction.

A. That is correct.

Q Isn't the Leuckart Reaction a standard reaction in all chemistry text books.

A. Well, basically, yes, sir.

Q And, can't it be used for many, many other things other than making amphetamine and methamphetamine?

A. Other than methamphetamine, yes.

Q Doesn't it really depend on in whose hands this formula is in and what chemicals are plugged in before you find out whether or not they are making something illegal?

A. That is what I was trying to say before.

Q It depends on the intent of the person who has this as to whether or not this, in fact, can be used illegally?

A. Yes, sir.

Q Isn't it true in the Leuckart Reaction phenyl 2 butnone can be used to be substituted for these different RD As, Bs, and Cs?

A. Yes, sir.

Q And come out with a legal amine?

A. Yes, Sir.

Q And, how about phenyl 2 pentnone, would that also be a

perfectly legal amine?

A. I would believe so.

Q How about phenyl 2 hexnone?

A. It depends. I could say what you are doing is substituting for P2P and ketone?

Q That is correct.

A. I would think so. I am not--I would think so.

Q How about phenyl 2 oxnone?

A. You can go right up the scale.

Q Yes, sir, isn't it true there are many, many, many things that can be substituted for what is here RDB, RDA and come out with this procedure and come out with a perfectly legal amine?

A. Yes, sir.

Q So it is totally dependent on who uses this procedure and what things they plug into it as to whether it is illegal?

A. Yes, sir.

MR. CLEVELAND. No further questions.

THE COURT. Mr. Cosgrove?

MR. COSGROVE. No questions, your Honor.

THE COURT. Mr. Saxer?

CROSS EXAMINATION

Q (By Mr. Saxer) Mr. Fonseca, I think you indicated four tests, marquie reactant?

A. Yes.

anything about it on the radio or television. I am going to stay on the bench, so we'll see you in the morning at 9:30.

(The jury left the courtroom)

THE COURT. Defendants have any motions at this time?

MR. COSSROVE. Yes, your Honor.

MR. SINGER. I have motions, or motions.

THE COURT. We'll start with Mr. Cleveland.

MR. CLEVELAND. We move at this time, your Honor, for acquittal of Defendant Daniel H. George under Rule 29, Counts 1 through 6--excuse me--1 through 5 and Count 7 of the indictment for the Government's failing to meet their burden of proof, and I have supplied the Court with memorandum of law in regards to this item. Do you want me to argue it orally also, your Honor?

THE COURT. Only if you feel it is necessary.

MR. CLEVELAND. I stand on my memorandum.

THE COURT. All right. I take it the United States has not yet had an opportunity to---

MR. CLEVELAND. That is correct, your Honor.

THE COURT. Read the memorandum in support of the motion for acquittal. Do you wish to argue it at this time, Mr. O'Neill, or do you want some time?

MR. O'NEILL. Your Honor, if the Court is willing to go by this procedure, I am willing to have other counsel

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All right now, do you wish to respond to Mr. Cleveland?

MR. O'NEILL. I believe there has been adequate time to review the motion and memorandum handed to me just as the Government closed its case with respect to Mr. George, your Honor. There are a number of things. First, we disagree to some extent with factual aspects; more specifically, in the law. We think the evidence very clearly shows Mr. George was not simply one who made sugar or yeast, supplied sugar or yeast to people, knowing they were going to be used for an illegal scheme as in U.S. v. Falcone. He supplied them with the formulas, the technical assistance, provided them specific chemicals; if they had problems, they came back to him; the items were not provided at regular retail prices but rather the evidence will suggest very highly inflated prices. He didn't simply make things available and indicate what it was but used the coded information.

We believe the Government's evidence and I quote "from a mere theoretical explanation of basic chemistry," we think it was a very clear indication, as perhaps Mr. Genest testified, makes clear, receipt of a good formula to manufacture methamphetamine. He assisted in the manufacture of P2P.

We think the evidence has been elicited here that indicates that Mr. George was, perhaps, one of the most key parts of the manufacturing operation of Jay Leavitt and

those he was associated with. In that respect, without Mr. George, there could have been no manufacturing. He was the key link, the one that supplied the formula in a coded fashion, coded manner, which would allow him to stay with the operation to ensure he received the high prices for the various chemicals. We think his activities in taking the various chemicals out, dumping them without relabeling them, and so forth, indicates very clearly he knew, himself, what he was doing was of an illicit nature.

The law as set out in the memorandum filed by Mr. Cleveland for purposes of discussion at this point, I haven't read the cases. We'll assume the cases are correct, but the evidence goes far beyond the cases as cited in there and the facts set out, your Honor.

MR. CLEVELAND. One point I would like to respond to, that is knowledge and intent. First of all, the Falcone case definitely says you can know that products will be used for illegal purposes and not be guilty of conspiracy, or aiding and abetting. That is Number One.

Number Two, it has clearly been stated by every witness who testified against Mr. George that he specifically did not want to be involved; specifically made reference to the fact he did not want to be involved with illegal drug activity.

THE COURT. That does not necessarily exonerate

him, does it?

MR. CLEVELAND. It goes a long way.

THE COURT. He can't knowingly close his eyes to what is going on and expect to escape.

MR. CLEVELAND. Falcone goes further. Falcone says he can even though that is not regular. We cite the form, the intent, the participation to commit the crime.

THE COURT. I will make the same ruling in your case that I made as far as Mrs. Leavitt is concerned, and I will deny your motion for acquittal. However, I will state I have not read your memorandum and I will do so, and I will also read the cases which you cite, and should I decide after I have done so to change the ruling, I will advise counsel in the morning.

Mr. Saxer, you have an oral motion to make at this time?

MR. SAXER. I would like on behalf of my client, Mr. Pappalardo, also to move for judgment of acquittal on his behalf, as part of the proceedings at this time, as well as, and because of what I have learned in the thirty-five hundred material that I have been given. In any event, although I am sure I haven't--I don't mean I should have been given grand jury minutes, for example, because I am somewhat acquainted with the quality, caliber, and very limited extent of the evidence put before the grand jury.

more than a day and a half at the most.

THE COURT. You think it will go that long?

MR. CLEVELAND. I am not quite sure. I know it will not take more than a day and a half.

THE COURT. Anything else anybody wants to bring up at this time? If not, we'll stand in recess until nine o'clock in the morning for counsel.

(Court recessed at 4:30 p.m.)

(June 16, 1976, 9:25 a.m. in the courtroom without the jury.)

THE COURT. Good morning. Is your client available?

MR. COSGROVE. She is, your Honor. She is probably not aware we are starting early.

THE COURT. Mr. Cleveland, I had a chance to read your memorandum in support of your motion for acquittal. You discuss in considerable detail the law concerning an aider and abettor, but I don't believe the Government is making any claim that Mr. George is an aider and abettor. Any claim as to that, Mr. O'Neill?

MR. O'NEILL. We think the evidence would suggest he was an aider and abettor, in a manner of speaking.

THE COURT. Doesn't he have to aid and abet the substantive crime itself?

MR. O'NEILL. Yes, your Honor. We are

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suggesting he aided and abetted the substantive crime by virtue of supplying the materials involved.

THE COURT. How do you know? There is no evidence as to that, that he is supplying the particular substances or chemicals involved with the particular transactions that you allege, it seems to me. Go ahead.

MR. O'NEILL. We believe there is some evidence of that, your Honor. We certainly concede we can't show the chemicals going in through this formula and coming back out in the hands of the holder. We agree with the Court that the only thing we have shown in that respect, Mr. George has a general concept of supplying chemicals and equipment, but more specifically, we have him on surveillance using the Leavitt vehicle, and distribution was made to the Holdens. We figure we have the conspiracy with respect to Mr. George. We don't think our evidence has shown he had specific knowledge of a specific distribution by the Holdens on a specific date, or that he necessarily knew who Mr. Leavitt was distributing the methamphetamine to.

MR. CLEVELAND. Your Honor, I thought it was apparently obvious there was no testimony whatsoever to directly connect Mr. George with any sales and distributions, and he was charged as an aider and abettor. There is nothing, as far as I can tell, to connect him to Counts 1 through 5 at all.

THE COURT. I wouldn't say that is quite true.

There is this Pinkerton business, Mr. Cleveland, and I think if it is established that he was a member of the conspiracy to the satisfaction of the jury beyond a reasonable doubt, then he can also be guilty of substantive offenses which the co-conspirators committed.

MR. CLEVELAND. He can't be guilty of offenses that a co-conspirator committed that was not directly related to his conspiracy. The Government is alleging a conspiracy where several conspiracies existed, and there is no doubt in my mind that you are correct, that he can be convicted on the substantive crime of manufacturing, but certainly not distributing.

THE COURT. We think the Government is not alleging several conspiracies. They are alleging only one conspiracy.

MR. CLEVELAND. But in a sense, I should say more correctly, there are several elements to the conspiracy, many of which, admittedly, Mr. George could not have known about and did not know about by the Government's best evidence.

THE COURT. I don't think he has to be involved in each element, as you call it, of this conspiracy as long as he was a member of the conspiracy, and he seeks in some way to make the conspiracy succeed.

MR. CLEVELAND. But he does have to, in fact promote it.

THE COURT. What do you mean?

MR. CLEVELAND. Promote the conspiracy under Falcone.

THE COURT. I think probably you are going to be entitled to, and we will work some language into the charge with reference to Falcone. I think the jury is probably going to have to be satisfied that there was more than your client that became a member of the conspiracy and assisted in making the conspiracy succeed, or attempting to do so, and I think it has to be more than he merely sold chemicals to individuals knowing they might be used for an illegal purpose. What do you say as to that, Mr. O'Neill?

MR. O'NEILL. We think our evidence goes far beyond that, of course.

THE COURT. That is something for the jury, and I think it is entitled to a charge, stemming from Falcone. I don't think you can completely ignore the holding of Falcone.

MR. O'NEILL. I am not suggesting the Court do so. We suggest Falcone--and I looked it over basically on the basis of Mr. Cleveland's motion of last night--it appears from what I can observe, Falcone is based on an aiding and abetting theory if one supplies, he can be an aider and abettor. Our evidence goes beyond what they would suggest. We understand what the Court will charge, or may charge, concerning the limitations based on Falcone.

THE COURT. You are telling me you think all of these defendants, in effect, aided and abetted, not just Mr. George, and in one count Mr. Pappalardo aided and abetted the perpetration of the principal substantive offense?

MR. O'NEILL. Yes, your Honor, we certainly agree our evidence with respect to the conspiracy theory and the substantive acts, on the basis of that is much stronger.

THE COURT. We'll take that under advisement. I am not at all convinced at this stage there is any aiding and abetting. I think whether you can prevail as far as substantive charges is concerned it will be solely on the basis of the language in Pinkerton, frankly. Mr. Saxer?

MR. SAXER. I wish to state in the contest of that and Pinkerton, the bill of particulars pre-trial, put down under Count 7 for conspiracy, they will rely on their independent acts alleged in the previous counts. Now before the Court the Government is saying we rely on these previous counts to prove the conspiracy. It is one way, now it is another. Do you know what I mean?

THE COURT. Not really.

MR. SAXER. I didn't understand it when I read the bill of particulars, but what the bill of particulars said for Paragraph 7 was to prove the conspiracy, we will rely on the transactions of sales and aiding and abetting, we proved through Counts 1 through 6, and now for the conspiracy--

THE COURT. Isn't that what the Government has endeavored to do? Not that these defendants, themselves, actually were the principals involved in the substantive offenses, but they relied upon these offenses to establish the fact there was a conspiracy, and that these offenses were done by the fact of the co-conspirators in meeting with the Holdens?

MR. SAXER. I suppose that is what they have attempted to do, yes.

THE COURT. Okay. In any event, Mr. Cleveland, my ruling with respect to your motion for acquittal remains the same, and, Mr. Cosgrove, my ruling with respect to your motion for acquittal, denying it, remains the same.

As far as Mr. Saxer is concerned and Mr. Pappalardo, I am going to deny Mr. Pappalardo's motion for acquittal. Now I understand, Mr. Saxer, maybe you had another motion.

MR. SAXER. Very briefly. I would like to move that certain portions of the record be stricken and the jury not asked to consider it, and the prosecutor ordered not to mention it. In particular, I refer to that portion of the testimony of Mr. Lotfy which I believe occurred on the first or second redirect--I am not sure--where he stated in non-responsive manner, as I recall, that Mr. Pappalardo stated that he earned \$12,000 and paid a high weekly rental on the summer cottage. My reason I ask that be stricken is when it happened, it was too late for me to do so. Second, it was not

THE COURT. I will ask counsel to get together with the reporter and run off the question and answer. I might say for the benefit of all the defendants' counsel, there were various objections made as to certain conversations that Mr. Lotfy and others testified to, which could be considered in the nature of heresay if, in fact, there was no conspiracy. The Court allowed these questions on the Government's assurance they would connect them up, and there came a time when, to the Court's satisfaction, a conspiracy had been established by a preponderance of the evidence, or there was a *prima facie* case of the conspiracy that was sufficient to let these various statements stand and to go to the jury for the jury's consideration.

I, of course, do intend to charge with respect to these statements and advise the jury in connection with the charge that if they find there was no conspiracy, these statements could not be considered against anybody except the person who made them, or dealing with actions and we consider it only as to the person who supported those actions. Anything further at this time?

MR. CLEVELAND. Two things, your Honor. With regard to your Honor's ruling upon Mr. George's motion for acquittal, I guess I didn't quite understand. I understood it was denied, but I thought you said to the United States Attorney that you were not convinced there was aiding and

abetting. Is that to say the jury will then have a decision as to whether or not they are connected through the Pinkerton charge?

THE COURT. I haven't made up my mind what I will do as far as aiding and abetting is concerned, Mr. Cleveland, but my offhand opinion, and present opinion, is that probably conviction on the substantive charges could occur only on the basis of the language of Pinkerton and in the Pinkerton charge.

MR. CLEVELAND. Thank you, your Honor. I have one other item by way of a motion in limine. If Defendant Daniel George decides to take the stand, I would move under Rule 609 that the introduction on cross examination of his previous convictions which are, to the best of my knowledge, two convictions for possession of controlled substances in Massachusetts and one conviction--perhaps it is unclear from the record whether there is, in fact, a conviction or whether it was dismissed on appeal on a conspiracy. We feel those convictions will be very prejudicial to Mr. George if brought out, and that I would represent to the Court that we would not be putting his record in issue, and we feel that the probative value of those convictions are far outweighed by the prejudicial effect they would have on the jury.

THE COURT. Mr. O'Neill?

MR. O'NEILL. Your Honor, we are still doing

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this time, offer Defendant's "C".

MR. O'NEILL. May I have a word with Mr. Cleveland to narrow the area we are talking about here? We have the same problem, we need time to look it over, if possible.

THE COURT. Fine.

DEPUTY CLERK CURRAN. Defendant George's Exhibit "D" for identification is a book.

Q (By Mr. Cleveland) Colonel, I hand you Defendant's "D" for identification and ask you to describe what it is, please. (Handed to the witness)

A. This is--I suppose you could think of it as a text book, but it is not the type of thing that would probably--let's put it this way--I wouldn't feel I would want to ask a student to buy this for his own use. It is more highly specialized, but it is a book that is in practically every library that has any chemistry books in it. It is a series of books. They come out with a volume most every year, and they have picked out each year certain of the articles that have been, that are of interest at that particular time, and this particular one which is Volume 5. I can't tell you, without looking, what particular year. That was 1949 which checks, because in the Thirties and Forties people were more and more interested in the amines because of the application of them in so many

industrial uses, and this particular one--a series of our thoughts--worked one Roger Adams who was head of chemistry at the University of Chicago; for years, after his retirement, he was a consultant to the United States Government for being first in the field of organic chemistry, in particular, and I just notice another article--not one which we are particular interested--by that same Blatt, co-author of the other book with Conant.

Q Is this a standard reference book?

A. It is a standard reference book. That particular one is a copy which belongs to the University of Vermont library.

Q You took it out yourself?

A. Yes, I took it out myself.

MR. CLEVELAND. I offer Defendant's "D".

MR. O'NEILL. Same problem with this volume, obviously.

Q (By Mr. Cleveland) Colonel, I hand you again for identification Defendant's "C" and ask you to turn to the page where you put a bookmark, or where I put a bookmark.

(Handed to the witness)

A. Yes.

Q What general area are we talking about in that book which you were discussing, and that you particularly looked up?

A. Well, the reference or the part I had marked here

which I thought was of interest in this particular situation was Page 164, with the paragraph headed "Preparation of amines".

Q In that article under "Preparation of amines," does that book explain how to make an amine?

A. Yes, it gives the formulae and the various steps by which one would proceed to make any one of several amines.

Q And, is it fair to say that the formula is standard, fairly standard?

A. You mean the procedures?

Q Yes.

A. The formulae or procedures?

Q Procedures.

A. The procedures, because the formulae--when you say formulae, I think of it in terms of the formula for the particular compound.

Q The procedures are similar but the kind of amine you might get out might be different?

A. It depends on what particular starting product you used. The procedures would be the same, but the final product would depend on what particular products you put together.

Q Now I know you used the word "product". Would it be fair to say the word "product", as you used it, is the final result of any procedure?

A. Yes. I am using the word "product." Our usual terminology is to refer to starting products and the final product, and the final product in this case would be that of the amine, and which amine we had made would depend upon what starting products we had used and run through this procedure.

Q Okay. If you ran through this procedure, depending upon what chemicals you applied within the procedure, would depend on what amine you would get?

A. That is right. If I were faced--if you were to ask me, could you make a certain amine, I would say, undoubtedly, unless an extremely unusual one, I would say, yes. Tell me what you want, and we'll figure back what steps one would have to go through and what starting products we have to have in order to end up with that particular one.

Q Now we are talking particularly here about amphetamines and methamphetamines. Could you give a brief explanation of what kind of amine that is?

A. Fundamentally, we are talking here in terms of one that has both an aromatic and an aliphatic group on it, but the important thing is the position of the amine in the group.

Q Could you explain that further? I am not sure I understand that.

A. Yes.

Q Would you like to use the blackboard?

A. It might be the simplest thing to do. (The witness went to the blackboard) I don't know how far you want me to go into this thing at this time.

Q. I want you to explain the chemical compound of amphetamine.

A. First, let's clear up this question of the simple amines, that the simplest possible one we get is if we had something like this in which we simply had one group. This is a group. You have used the term "Group 2" or P times a simple group attached to that would be a simple amine. In other words, the simplest possible amine that we could have would consist simply of these two organic groups--the amino group and the methyl group. Now, if we want to get an amphetamine situation, we take one here, in which we have a group, and for a particular reason I would rather not put on a particular group at a time, would indicate this is a particular group, a phenyl group we have attached to a carbon, which is a group. We have attached here a second carbon and another group here. This gets a little complicated for me, too. I don't want to use specific compounds at this point, because if I do, I will be telling people, you people, how to make amines. We'll simply put a group in there. Again, this group is the same as I had here, and then here is the crux

of the situatic in which we have this NH<sub>2</sub>, or since I used this up here, I will stick to the same procedure here, and indicate that I have two hydrogens attached to that. That is my amino group. This here, if I have the proper group in there, is an amphetamine, a simple amine.

Q How dould you explain that to a chemistry class?

A. Pretty much as I have explained it here. In many, many cases we write what we call, at this time, formulas instead of using a specific group as I did here, with a simple methylamine. We simply write an R indicating it is a radical A group of compounds forming a radical. In this particular case, when I write this case here in this way, I would have indicated to a class that I was talking about the whole field of simple amines, and that any amine, any one of maybe a hundred different amines would be written in t's way. The only difference would be that this R might be a CH<sub>3</sub>, C<sub>2</sub>, H<sub>5</sub>, C<sub>3</sub>, 3H and so on on up de-pending on how far these research people have gone in making them stick together.

Q What is CH<sub>3</sub>?

A. That is the simple methyl group we find here in methyl-amine.

Q So is it fair to say R is a variable?

A. R is a variable. If this happened to be one of the

aromatics, we would probably indicate it in this way and indicate T in there if we had a simple aromatic amine instead of an aliphatic amine. If I wanted to show reactions, if this were reacting with something to give a new product, when I ended up my new product would have this group in it because this group are pretty stable.

Q If you substituted one chemical or another for what you have up there for the word "R", would you get a different chemical compound?

A. In the final product, yes, obviously.

Q And would it be fair to say there is a basic formula for making amines and it depends on what values are put into R?

A. That is right; that is right.

Q To tell you what kind of amine you would get?

A. Absolutely.

Q Would you put in for the jury what value you have, what you put in for R if you were going to make an amphetamine?

A. There would be no difference in this part here; if I were going to make one of the methylamines, the difference would simply be in here. (indicating)

Q What would you put in there?

A. In this case, I would put a phenyl group C<sub>6</sub>H<sub>5</sub>.

Q If you were going to make an amine that is not an amphetamine, would you use something else in that box?

A. A different compound, and it would give a different radical here; a different group would give us a different final product.

MR. CLEVELAND. Thank you very much. You may resume the stand.

(The witness resumed the stand)

Q (By Mr. Cleveland) When teaching chemistry classes, is is your standard procedure to teach in the manner you just exhibited for the court?

A. Yes, for the simple reason that if a student learned the type of reactions using the Rs or the Phenyl group simple, if he learned to do the reaction in those, he learns one simple reaction and then some day he is faced with a more complicated one, all he has to do is go back to his simple reaction and plus into it, if you will, the proper radical, the proper building blocks. These radicals are nothing but building blocks.

Q Could this formula, as you put it up here, be easily made in a chemistry laboratory?

A. Oh, yes.

Q In a high school curriculum?

A. Yes.

Q College?

A. Yes.

Q I don't mean to belabor the point. Am I correct in

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understanding then, even in the actual manufacturing that the procedure might remain the same, but there would be a difference in what value you put in the R for radical?

A. That is right; that is right; That R, it is a fact of organic chemistry these radicals are stable, quite stable, and if you start with A, as I did, in that case with a methyl group, if I put a methyl group in there and run that through, I would have a methyl group when I got through. It might have been in a different position, and the new product might have had entirely different properties, but the methyl groups would be the same.

Q Now would you say in your professional opinion that a person who was in possession of the materials which you were able to find in the library at U.V.M. could make such an amphetamine?

A. I don't see any reason why he couldn't, and I could even add to that, that we have, this morning, only looked at two or three different references, and that there are others; that this particular text book is a fairly advanced one. There are others much simpler that would be even easier for him to follow than these.

Q It would not require any specialized knowledge to do such a thing?

A. Not if he knew the fundamentals, the fundamental principles that he could read out of most introductory

books.

Q Now as a chemist who has had many, many years of teaching experience, what would you say about the access and availability of information with regard to the making of amphetamines or methamphetamines?

A. Well, this MERCK INDEX we have seen here this morning is one example. I don't think I mentioned this. This book is very readily available because for years the MERCK people distributed these to colleges, and I think to high schools, to be used as prizes for students who had done well in their introductory chemistry courses.

Q So that you are saying the availability of making amphetamines was passed out as a prize?

A. Almost, almost, but this was before we realized the abuse, let's say, of these particular groups of compounds.

Q With that abuse in mind, has there, in any way, been a change really in the availability of the information?

A. I am afraid not.

MR. CLEVELAND. Thank you very much. No further questions at this time.

CROSS EXAMINATION

Q (By Mr. O'Neill) Doctor, this procedure you have described here on the blackboard, what level does a person, what level of chemistry course---high school, college, graduate school---what level can a person be able to read such a

have any motions at this time?

MR. CLEVELAND. Yes, your Honor. We would like to renew our motion for judgment of acquittal that we made at the end of the Government's case on the same grounds, and on the additional ground that no connection, no evidence or connection whatsoever has been made to Counts 1 through 5 with respect to Daniel George either substantively--strike that--substantively, in any way, and we feel the Court should, at this time, particularly dismiss Counts 1 through 5 as no evidence has been shown he participated in any way, or was even in the State of Vermont.

THE COURT. Mr. O'Neill, do you wish to respond?

MR. O'NEILL. We rely on the argument previously made. We think we have shown evidence of Mr. George's supplying chemicals and equipment, specifically over the period of time these were manufactured ultimately up here in Vermont. We can rely on the Pinkerton theory and rely on the other arguments, unless the Court has other ideas.

THE COURT. I am only charging on the Pinkerton theory as far as Counts 1 through 5 are concerned in association therein of Mr. George and Mr. Pappalardo. Mr. Cosgrove, any motions?

MR. COSGROVE. Yes, your Honor. I would like to renew my motion for judgment of acquittal on Count 7

charging Joan Leavitt with conspiracy. Your Honor, I don't have much more to argue by way of argument aside from what has been stated, your Honor. Just that I submit to the Court there has been no evidence from which a court, from which any jury can find she actually entered into an agreement with anybody with respect to the sale or manufacturing of drugs, and that would be the basis of the argument, your Honor.

THE COURT. Mr. O'Neill?

MR. O'NEILL. We rely on our previous argument to show the opposite of what Mr. Cosgrove said.

THE COURT. Mr. Saxer?

MR. SAXER. Simply I renew the motions on behalf of Mr. Pappalardo for judgment of acquittal as to Counts 4 and 7 on the grounds I would state if I stated them again; on the same grounds as I stated them before.

THE COURT. It is not necessary to restate them.

Mr. O'Neill?

MR. O'NEILL. We'll adopt our previous argument.

MR. CLEVELAND. Your Honor, there is one additional fact I would like to bring out; that is, I feel under the Second Circuit rules where under Rule 29 the court may reserve judgment, may change its mind on a motion for judgment of acquittal if evidence is brought in by the defendant in his own defense. We feel no evidentiary changes as to the prima facie case of Daniel George has been brought in in the

defendant's case.

THE COURT. You are suggesting rather than denying the motion, I should reserve judgment, reserve a ruling thereon?

MR. CLEVELAND. No, your Honor. I would request you don't derv the motions.

THE COURT. We'll deny all the defendant's motions. Is the Government ready to commence its argument?

MR. HUGHES. We are, your Honor.

THE COURT. Will you argue first, Mr. Hughes?

MR. HUGHES. Yes, your Honor.

THE COURT. Bring in the jury, please.

THE COURT. Yes, it may.

Q (By Mr. O'Neill) Do you know, lastly, an individual by the name of Daniel Papalardo?

A. Yes.

Q Do you see him in the courtroom?

A. Yes, he has a paisley shirt on and a dark tie.

MR. O'NEILL. We ask the record reflect the identity of Mr. Pappalardo.

THE COURT. Yes.

Q (By Mr. O'Neill) When did you first meet, approximately, Mr. Jay Leavitt?

A. In the fall of 1971.

Q Briefly, what were the circumstances?

A. I sent to Salem, New Hampshire with a Mr. Robert Melsard.

Q Would you spell that, please?

A. M-e-l-s-a-r-d. We travelled to Salem, New Hampshire to the residence of the Hetheringtons where Mr. Leavitt was residing with his wife, for the purpose of purchasing a quarter pound of amphetamines; crystal amphetamine product.

Q Did you make such a purchase?

A. Yes, we did.

Q How much?

A. Fifty-five dollars. We purchased the quarter pound of

amphetamine drugs.

Q Did you have occasion to go there from time to time with Mr. Leavitt thereafter?

A. Yes, I did.

Q And where did Mr. Leavitt indicate to you at that point in time the amphetamine was coming from?

A. He indicated to me, he along with Mr. Melsard and Mr. Douglas Rumrill, were transporting them from Canada to the United States.

Q Now was there a point in time thereafter, to skip ahead somewhat, you became involved in importation of controlled substances?

A. Yes, there was.

Q Do you recall approximately when that was?

A. About six to eight months later.

Q What was the basic method of the importation of the controlled substances?

A. I would fly to Montreal, usually on Delta Airlines, and get a suite at the Sheraton Montreal in downtown Montreal and await contact with Mr. Leavitt who would bring a sample of the drug to be purchased to me, and upon examination I would give him a certain amount of money and then fly back to the United States and await the arrival of the transaction; the transacted amount of drugs to be delivered to me.

Q (By Mr. O'Neill) How was it that you first met Mr. Prebble?

A. Mr. Leavitt brought him to my Cambridge apartment.

Q And when he came on the first occasion, again, approximately, when was this, please?

Q. This would be the latter part of 1973.

Q Did Mr. Prebble have equipment of any kind?

A Yes. Mr. Leavitt went with Mr. Prebble to my Harvard Street apartment and Mr. Prebble had with him a distillation apparatus and two bottles of chemicals and a bottle of liquid.

Q Did either individual say anything to you what they wanted to do?

A. Yes. Mr. Leavitt asked if he and Mr. Prebble could use my apartment to do a step in a distillation process after manufacturing amphetamines.

Q And was this done?

A. Yes, this was done in a bedroom.

Q Who did the process?

A. Mr. Michael Prebble.

Q Now thereafter, did you have occasion to make purchases from Mr. Prebble?

A. Yes, we made several purchases from Prebble.

Q How much, approximately, did you purchase?

A. Quarter pounds; a pound, altogether.

A. I was from my college days when I would get equipment. In the chemistry laboratory, we would have to pay for our laboratory bill at the end of the year. I had a pretty good idea of what a laboratory costs.

Q Roughly, how long was it since you had been in college at the time you were dealing with Mr. George?

A. Several years, but also from my chemistry experience we had catalogs and the cost of equipment in 1970.

Q How did the prices in 1970 that you observed in catalogs compare with the prices Mr. George was charging you for your items you knew the prices for?

A. For items I knew the prices, Mr. George was charging a markup of three to four hundred per cent.

Q With respect to going to the vehicle that was used by Mr. George to pick up equipment, if Mr. George used one of your vehicles; that is to say, rented one that belonged to you, for chemicals or equipment, if there is a pattern if it has to be done individually, fine. How did he obtain the vehicle and return with the supplies or whatever type of location?

A. If at the time we had only one rented vehicle, he would take the one rented vehicle and return to the laboratory at this time with the chemicals in the singly rented vehicle. If we had two, we met at a predetermined location and transferred from one to the other. If he used his own

THE COURT. Anything further, Mr. Hughes?

MR. HUGHES. I have nothing further, your Honor.

THE COURT. All right, Mr. Cram, you may step down.

(Roger Allan Cram left the courtroom and a new witness entered.)

PAUL REUTER, Sworn

DIRECT EXAMINATION

Q (By Mr. Hughes) Mr. Reuter, would you state your name and address for the record, please?

A. Paul Reuter, Healthco Scientific, 250 Turnpike Street, Canton, Massachusetts.

Q Is that where you work?

A. Yes.

Q What is your job?

A. I am a customs service representative.

Q What exactly do you do as a customs service representative?

A. Over-the-phone sales, cash sales, order taking, phone customers over the phone.

Q How big is Healthco Scientific Company?

A. We have a laboratory and hospital medical laboratory, supply house.

Q So you sell laboratory equipment?

A. Yes, we do.

Q Do you sell chemicals?

A. Yes.

Q Sell chemical supplies?

A. Yes.

Q Do you sell to someone on a cash basis?

A. Yes, we do.

Q What would the procedure be for someone to buy something on a cash basis?

A. It really isn't any set procedure. Anybody can buy a chemical.

Q How would they do that?

A. Just come and ask, say I want to buy such and such.

DEPUTY CLERK CURRAN. Government's Exhibit "57" for identification is a group of sales orders.

Q (By Mr. Hughes) Now, do you know someone by the name of Daniel George?

A. Yes, I do.

Q Is he present in Court?

A. Yes, he is.

Q Can you identify him, please?

A. The gentleman seated beside the man with the green coat on.

Q What color coat is he wearing?

A. A blue coat.

Q Now, have you ever done any cash sales with Mr. George?

A. Yes, I have.

A. Accordingly there on our records, yes, sir.

Q About how many do you have there?

A. I'd say, about 15, 16.

Q Have you personally transacted some of these?

A. Yes, sir, all but one that I have in this group.

Q Did you, personally, pull these from your files?

A. Yes, sir.

Q And, brought them here?

A. Yes, sir.

MR. HUGHES. At this time, the Government moves the admission of Government's "59" for identification.

MR. CLEVELAND. No objection.

THE COURT. "59" is admitted.

(Government's Exhibit "59" was received in evidence.)

Q (By Mr. Hughes) Mr. Bresnahan, have you ever had talks with Daniel George when he was purchasing from you?

A. Yes, sir.

Q Did Mr. George ever tell you what he did for a living?

A. Said he was a consultant at one time to companies; another time, he tutored junior high school students in chemistry.

Q Was this in response to a question of yours?

A. Yes.

Q Were you interested in what he was doing with such large

Q Known as the B.N.D.D.?

A. Yes.

Q During this period of time, you have been with the B.N. D.D. and D.E.A.?

A. That is correct.

Q Have your duties changed at all from the B.N.D.D. to the D.E.A.?

A. No, it hasn't.

Q What are your duties, presently?

A. My duties are to provide scientific and technical information to special agents and to law enforcement officials requiring this information; also to assist them in seizures of clandestine laboratories, vacuum searches, that type stuff. I also analyze samples submitted by the special agents to determine their identity and to testify in court.

Q Prior to your working with the B.N.D.D. and the D.E.A., how were you employed?

A. I was employed as an analytical chemist with the Bureau of Customs.

Q For how long, approximately?

A. I was employed there for a period of ten years.

Q What were your duties with the Bureau of Customs?

A. I was an analytical chemist performing, analyzing oil products, food products, organic chemicals, drugs and

narcotics.

Q Prior to your employment with the United States Customs, who were you employed by?

A. By the United States Food and Drug Administration.

Q What were your duties there?

A. Again, I was employed as an analytical chemist performing analytical analysis on food and drug products.

Q What is your educational background?

A. I have a Bachelor of Science in Chemistry from South-eastern Massachusetts University.

Q Over all, how long have you been a chemist?

A. I have approximately eighteen years experience as an analytical chemist.

Q Approximately how many times have you testified in court as an expert with respect to controlled substances?

A. I would say, approximately 130 times.

Q How many occasions have you analyzed substances which were proved to be narcotics or other controlled substances?

A. I would say I have handled at least 7,000 samples.

Q On approximately how many of those occasions have the substances involved been tested and found to be either methamphetamine or amphetamine.

A. I would say approximately five hundred times.

Q Before we go further on, what is basically the difference in layman's terms between methamphetamine and emphetamine?